

LIST OF PERSONS, ORGANIZATIONS, AND PUBLIC
AGENCIES THAT COMMENTED ON THE
DRAFT EIR

**LIST OF PERSONS, ORGANIZATIONS, AND PUBLIC AGENCIES
THAT COMMENTED ON THE DRAFT ENVIRONMENTAL IMPACT REPORT (EIR)**

A draft version of this EIR was circulated for public review from October 15, 2009 to November 30, 2009. The following is a listing of the names and addresses of persons, organizations, and public agencies that commented during this public review period.

<u>LETTER DESIGNATION</u>	<u>NAME</u>	<u>ADDRESS</u>
STATE AGENCY		
A	California Natural Resources Agency, Department of Fish and Game, South Coast Region	4949 Viewridge Avenue San Diego, CA 92123
LOCAL AGENCY		
B	Twin Oaks Valley Community Sponsor Group	P.O. Box 455 San Marcos, CA 92079
SPECIAL INTEREST/ORGANIZATIONS		
C	California Indian Legal Services, Escondido Office	609 South Escondido Blvd., Escondido, CA 92025
D	Endangered Habitats League	8424 Santa Monica Blvd., Suite A 592 Los Angeles, CA 90069-4267
E	San Diego County Archaeological Society, Inc.	P.O Box 81106 San Diego, CA 92138-1106
INDIVIDUALS		
F	Allen F. and Karen Binns	2637 Deer Springs Place San Marcos, CA 92069-9761
G	David P. Hubbard Gatzke, Dillon & Balance LLP	Emerald Lake Corporate Center 1925 Faraday Avenue, Suite 150 Carlsbad, CA 92005

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COMMENTS AND RESPONSES TO COMMENTS
AND RECOMMENDATIONS RECEIVED ON THE
DRAFT EIR



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201
<http://www.dfg.ca.gov>

ARNOLD SCHWARZENEGGER, Governor



November 30, 2009

Eric Gibson, Director
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, California 92123-1666

**Subject: Draft Environmental Impact Report (EIR/SCH No. 2005121098),
General Plan Amendment (GPA 05-010), Specific Plan (SP03-003) and
Draft Habitat Loss Permit (HLP) for the Sugarbush Residential
Development Project, County of San Diego, California
(TM 5295RPL, Log No. 02-08-047)**

Dear Mr. Gibson:

The California Department of Fish and Game (Department) has reviewed the draft Environmental Impact Report (EIR) and associated draft Habitat Loss Permit (HLP), dated October 2009, for the above-reference project. The comments provided herein are based on information provided in the draft HLP; the updated biology report for the project (Helix, October 2009); previous meetings (e.g., April 14, 2004) with the Wildlife Agencies (collectively the Department and the U.S. Fish and Wildlife Service [Service]), San Diego County (County) staff and project applicant; our prior January 30, 2006 comment letter (attached); our knowledge of sensitive and declining vegetation communities in the County; and, our participation in regional conservation planning efforts.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; Sections 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA, Fish and Game Code 2050, *et seq.*) and other sections of the Fish and Game Code (e.g., 1600 *et seq.* and 3500 *et seq.*). The Department also administers the statewide NCCP Program (Fish and Game Code 2800, *et seq.*) and collaborates with the Service on projects that may involve impacts to biological resources.

The project site is located at the southern terminus of Sugarbush Drive, and western termini of Cleveland Trail and Lone Oak Lane, within the unincorporated North County Metro Community/Regional Planning Area of San Diego County. The proposed project includes the development of 45 residential lots on a 115.5-acre site, the extension of Sugarbush Drive for primary access, and associated fuel modification. The site is located in an area that has native habitat on and immediately off site of "very high" habitat quality; therefore, virtually the entire site is located within the draft Pre-approved Mitigation Area (PAMA) under the draft North County Multiple Species Conservation Program (NCMSCP).

According to the updated biology report by Helix Environmental Planning, Inc. (October 2009), the project site is composed of the following habitat types: coast live oak woodland (1.0 acre;

Conserving California's Wildlife Since 1870

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CLOW), Diegan coastal sage scrub (91.3 acres; CSS), coastal sage-chaparral scrub (2.8 acres; CSCS), coyote brush scrub (0.3 acre; CBS), annual grassland (13.5 acres; AG), eucalyptus woodland (0.2 acre; EW), non-native vegetation (2.0 acres; NNV), disturbed (4.1 acres; DIST), orchard (0.1 acre; ORCH), and developed (0.2 acre; DEVL). The proposed project would impact 23.1 acres of CSS, 0.6 acre of CLOW, and 11.1 acres of AG. Impacts to CSS would be mitigated at a 2:1 ratio, impacts to CLOW would be mitigated at a 3:1 ratio, and impacts to AG would be mitigated at a 0.5: 1 ratio. All proposed mitigation would occur on-site through the dedication of a 77.6-acre biological open space easement. Sensitive species observed on site include the federally listed threatened coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher), red-shouldered hawk (*Buteo lineatus*), and turkey vulture (*Cathartes aura*).

Based on our review of the past/current draft environmental documentation and HLP concurrence request and our previous collaboration on the project dating back to 2004 (see attached letter), the Wildlife Agencies offer the following comments and recommendations and comments to assist the County in minimizing and mitigating project impacts to biological resources during CEQA review and to achieve compliance with the Habitat Loss Permit Process. Our previous 2004 HLP letter is also attached—where applicable, comments from our previous letters are denoted with an asterisk(s) (*):

1. *As currently proposed, the project would extend Sugarbush Drive diagonally across the project site to provide primary access to the development, thereby bisecting the largest block of the proposed 76.2-acre on-site biological open space. The proposed access road (and associated traffic) within the proposed biological open space is a source of edge effects and may increase direct impacts to on-site wildlife through road mortality.

To minimize potential adverse edge effects within the biological open space easement where the road is proposed, we recommend that the extension of Sugarbush Drive be eliminated from the proposed project and that primary access to the project be obtained from the south or west. If removal of the extension of Sugarbush Drive is not feasible, we request that the final HLP and EIR discuss why its removal is infeasible. If the extension of Sugarbush Drive remains part of the proposed project, we recommend that the road be designed to provide for wildlife movement through the incorporation of large box or arch underpasses or overpasses. Additionally, any roadway lighting should be the minimum necessary for public safety, and where necessary, should have low-sodium fixtures and/or be shielded downward to prevent illumination of adjacent habitats in conserved open space.

2. The Wildlife Agencies note that since the 2004 surveys, there has been a reduction in the amount of sensitive habitat mapped on-site. Please explain why there is a 0.4 acre reduction in disturbed CSS (from 91.7 acres to 91.3) and a corresponding increase in disturbed habitat (from 3.7 acres to 4.1 acres) in the October 2009 biology report. If this change was a result of unauthorized activities that have occurred on-site since 2004, the reduction in CSS should be factored into the mitigation requirements for the project. Also, there appears to be some discrepancy between the CSS acreage proposed to be impacted. In some areas of the project documentation (e.g., DEIR summary table S-1, BI-1b), impacts to CSS are calculated to be 23.1 acres (HLP) and in other areas it is listed as 23.3 acres (DEIR pages 2.2-19-20). Please clarify what the proposed CSS impacts are in the final EIR and HLP.

A1. The proposed access from Sugarbush Drive is the only legal access to the Proposed Project. Project access cannot be obtained from the west or the south for this project. Access from Lone Oak Road would require upgrades to a local private road and would require offers of dedication from abutting residents. Takes of private property, combined with vegetation removal that would be required to use that access route, are not feasible given the availability of the legal access route. With regard to use of Cleveland Trail as the primary access, consideration of unnecessary take of private property also applies to that route. In addition, use of Cleveland Trail as primary access would require substantial upgrade to a route crossing Buena Creek and abutting oak woodland, with commensurate impacts to both riparian and woodland habitats that would exceed biological impacts resulting from implementation of the Proposed Project. Consistent with the comment, this information comprises part of the EIR through its inclusion in this response.

Potential impacts from alignment of the proposed access road were carefully considered in the biological analysis for the project. The access road would not be a substantial barrier to wildlife using this site—it would be at grade and would only carry an anticipated 540 daily trips. In addition, it would be minimally fenced and slopes would be planted with native plant species. Sensitive wildlife species noted on this site were coastal California gnatcatcher, red-shouldered hawk and turkey vulture. These species would be expected to fly over this private road and would not be significantly impacted by its placement. Raccoons, ground squirrels, rabbits and woodrats may use the proposed culverts. The only larger mammal known or considered likely to occur on site is the coyote, which is expected to cross the road with minimal difficulty. While some road kill may occur, this is considered less than significant based on the low sensitivity of this species and the low level of traffic. Similarly, mule deer, which is considered to have moderate potential to occur on site, along with other larger mammals that may occur, are expected to be able to jump the proposed split rail fencing and cross the proposed road with little difficulty, due to their longer sight distance and the low levels of traffic. As no significant impacts associated with wildlife movement are anticipated, there is no nexus for the County to require construction of an alternate structure. Additionally, a larger structure would not provide a benefit to the sensitive species known to occur on site, as they are all avian. Edge and indirect effects overall (dust, human or pet incursion, invasive plant species, etc.) are addressed on pages 2.2-14 through 2.2-16, 2.2-19, 2.2-20 and 2.2-23 of the EIR.

As noted on page 1-8 of the EIR, roadway lighting would be the minimum necessary for public safety. Approximately six low-pressure sodium lights would be required on site, directing light to Project streets. Lighting would comply with Division 9 of the County Light Pollution Code (LPC) standards, requiring this lighting to be less than 4,050 lumens and fully shielded, minimizing nuisance lighting, particularly adjacent to residential uses and preserved natural open space.

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A2. The 0.4-acre reduction of on-site disturbed Diegan coastal sage scrub (DCSS) and corresponding increase in disturbed habitat are the result of habitat clearing by an abutting property owner to the north. Permission to complete this clearing was neither requested by the neighboring property owner nor granted by the Applicant. The Fire Marshal has more recently requested (and the Applicant agreed) to a 50-foot on-site clearing limit to be associated with the off-site uses which is reflected in the current Project biological technical work (this area is shown in hatching on Figure 2.2-4a).

Based on the comment, mitigation proposed for the unauthorized clearing was reviewed. Consistent with the comment, the entire 0.4 acre has been added into DCSS existing conditions and impact totals as part of the EIR. The Project Applicant would mitigate for these impacts at a 2:1 ratio, setting aside on-site habitat. The changes to impact numbers for this habitat, as well as clarifying text, have been incorporated into the EIR on pages S-10, 2.2-3, 2.2-4, 2.2-10, 2.2-16, 2.2-17, 2.2-19, 2.2-20, Table 2.2-1, Table 2.2-4, Table 2.2-5, Table 2.2-6 and 7-2.

The apparent discrepancy is related to overall DCSS impacts versus totals broken down by on- or off-site effects. On-site impacts to DCSS in the Draft EIR were 23.1 acres and off-site impacts to DCSS were 0.2 acre, for a total 23.3 acres. These totals have now been modified, consistent with above text, for a total impact to DCSS of 23.7 acres, with on-site impacts totaling 23.5 acres, and off-site DCSS impacts totaling 0.2 acre.

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3. *The final HLP and final EIR shall be conditioned to prohibit all brushing, clearing, and grading during the gnatcatcher breeding season (February 15- August 30). In addition, the following condition should be included in the final HLP and final EIR to address potential indirect impacts to the gnatcatcher: if construction is necessary adjacent to preserved habitat during the breeding season, pre-construction protocol surveys shall be conducted in the adjacent habitat to determine the location of any nesting birds. The Wildlife Agencies will be notified if any nesting birds are found. If construction activities are not completed prior to the breeding season and noise levels exceed this threshold, noise barriers shall be erected to reduce noise impacts to occupied habitat to below 60 dBA hourly Leq and/or the culpable activities shall be suspended.

4. *A management and monitoring plan (MMP), including a funding commitment and Property Analysis Record (PAR) or an equivalent method to, should be developed for the on-site biological open space easement, and implemented in perpetuity to protect the existing biological functions and values. The applicant should identify an appropriate natural lands management organization, subject to approval by the County and Wildlife Agencies. The organization should prepare a management plan which must be reviewed and approved by the County and Wildlife Agencies.

5. *Conditions that require a monitoring biologist to be on-site during initial clearing and grubbing of habitat within 500 feet of native habitat should be included in the final HLP to minimize project related impacts to on- and off-site native habitats.

6. To ensure that the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines and that the habitat loss will not preclude or prevent the preparation of the subregional NCCP (e.g., NC-MSCP), we recommend that the Reduced Project Alternative be duly considered as the proposed project, if feasible, by the applicant and County. The Reduced Project identified in the draft EIR would better achieve the required HLP findings by further reducing impacts to CSS in an area occupied by gnatcatcher by stemming off a single street as well as further minimizing impacts to the draft PAMA as envisioned in the NC-MSCP. If this alternative is selected, it should also include the block wall on the easterly side (as is currently included with the proposed project) to reduce brush clearing in conserved open space and to avoid indirect impacts to occupied gnatcatcher habitat. Moreover, it should be noted that this alternative provides two access points, which could result in the need NOT to have the proposed road that cuts across and bisects conserved open space. As identified in our past letter and current letter (See comment No. 2 above), access from the south is preferred by the Wildlife Agencies.

If the Reduced Project Alternative identified in the draft EIR (with a block wall on the easterly side) is not feasible, we request that the final HLP and MND should fully discuss why it is infeasible. In short, the proposed design (with the block wall to limit brush clearing) is a positive step forward in having clustering/consolidating development as an available tool to help achieve compliance with HLPs and to implement the NCMSCP; however, there is still room for improvement. Considering the history of the project, its location and current resources on-site the proposed project would be appropriate in this instance; however, it is not necessarily the template to be used in all areas of north County.

A3. This comment was originally made in a joint United States Fish and Wildlife Service (USFWS)/CDFG letter submitted on the Project on January 30, 2006. The County agreed with the comment. As a result, the EIR contains Mitigation Measure M-BI-8, stating that no grading or clearing would occur within 300 feet of nesting activity during gnatcatcher breeding season unless no gnatcatchers are found during pre-construction surveys performed by a qualified biologist. The draft HLP (item B4) also states that the following restriction will be on the grading and/or improvement plans and on the Final Map: "Restrict all brushing, clearing, and/or grading such that none will be allowed during the breeding season of the California gnatcatcher. This is defined as occurring between February 15th and August 30th. The Director of Planning and Land Use, may waive this condition, through written concurrence from the U.S. Fish and Wildlife Service and CA Department of Fish and Game, that no California gnatcatchers are present in the vicinity of the brushing, clearing, or grading." In addition, Mitigation Measure M-BI-10 states that no construction activities are allowed near an active gnatcatcher nest if noise levels at the nest would exceed 60 dB(A) Leq. No changes to the EIR text are required; however, staff will ensure the above mentioned noise measure is specified on the final HLP (item A8).

A4. This comment also was originally made in a joint USFWS/CDFG letter of January 30, 2006. The County agreed with the comment. As a result, the second bullet of Mitigation Measure M-BI-3 on page 2.2-21 of the EIR discusses the requirement to implement a Habitat Management Plan (HMP), which would include habitat monitoring and management. The proposed on-site biological open space would be preserved in perpetuity and managed by an appropriate natural lands management organization. Approval of the HMP by the County and Wildlife Agencies would occur prior to finalization of the map or approval of other discretionary permits. No changes to the EIR text are required.

A5. This comment also was originally made in a joint USFWS/CDFG letter of January 30, 2006. The County agreed with the comment. As a result, the fourth bullet of Mitigation Measure M-BI-4 on page 2.2-21 of the EIR requires that a qualified biologist monitor clearing, grubbing, and grading activities, as well as trenching within Cleveland Trail and excavation of jacking pits for installation of the sewer line between Cleveland Trail and Buena Creek Road. No restriction on location is included within this mitigation measure. Since the biologist would be present on a daily basis for clearing, grubbing and grading, s/he would be present for activities within 500 feet of native habitat. As part of routine County procedure, this mitigation measure would become a Project condition and will be included in the final HLP. (As part of the HLP process, the contract for biological monitoring shall also be submitted to the wildlife agencies for review and approval.) No changes to the EIR text are required.

A6. Comment noted. The issue of whether to select a project alternative will be before the decision makers during Project deliberations. As a matter of clarification,

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however, please note that biological impacts associated with Proposed Project implementation would be reduced to below a level of significance due to open space set aside. NCCP compliance is addressed on pages 2.2-16 through 2.2-19, 3.1-40 and 3.1-45 of the EIR. The Reduced Project Alternative would result in 1.5 acres less impact to coastal sage scrub as compared to the proposed Project. This difference is primarily associated with the location of the northeasternmost lot.

The commentor is incorrect regarding the potential for the alternative not to require Sugarbush Drive extension. Under current County and Fire Marshal requirements, all proposed development alternatives require both primary and secondary emergency access/egress routes. Please refer to Response to Comment A1 regarding use of Sugarbush Drive as the primary access.

- A7. The issue of whether to select a project alternative will be before the decision makers during Project deliberations. As discussed in Section 4.4 of the EIR, the Reduced Project Alternative is feasible but would still take primary access from Sugarbush Drive. It is not recommended for approval, however, because the Project as proposed would meet all objectives, while not resulting in any CEQA-significant and unmitigable impacts. The incremental decrease in mitigable DCSS impacts (approximately 1.5 acres) is not great enough to support elevation of this alternative to project status.

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Eric Gibson, Director
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- A8 [7. Page 1-11 of the draft EIR, notes that "layout (while still required to remain within the footprint) was approved by the resource agencies." Please clarify this statement in the final EIR.
- A9 [8. According to the Draft HLP and Draft EIR, the area on-site that is located outside the draft NCMSCP PAMA (as well as the area inside the PAMA but outside the development area) will have a biological conservation easement recorded over it as a condition of HLP approval. The Wildlife Agencies recommend that the area currently located outside the Draft PAMA that will be conserved have the same biological conservation easement recorded over it as the area to be conserved in the draft PAMA. This way, the remaining habitat on-site (whether inside or outside the Draft PAMA) could effectively be preserved and managed as a functional unit.
- A10 [9. It is the Department's understanding that no public or private trails are included/required as part of this project. If true, then the biological conservation easement required for the final HLP and as defined in the final EIR should acknowledge that no trails would occur in the conserved open space. This is especially important if the proposed road is retained to ensure that fragmentation of the on-site conserved open space is minimized to provide the largest block of habitat possible so that it remains as functional as possible for the gnatcatcher, herpetofauna and other species post-development.

The Department appreciates the opportunity to comment on the Sugarbush draft EIR and associated HLP. If you have any questions regarding to this letter, please contact Randy Rodriguez at (858) 637-7100.

Sincerely,



Edmund Pert
Regional Manager
South Coast Region

Enclosures (1):

1. Attachment A – Previous January 30, 2006 Comment Letter: Mitigated Negative Declaration and Draft Habitat Loss Permit for the Sugarbush Residential Development Project, County of San Diego, California (TM 5295RPL, Log No. 02-08-047).

cc: Robert Hingtgen
County of San Diego, Department of Planning and Land Use, San Diego

Randy Rodriguez
Department of Fish and Game, San Diego

A8. This phrase was intended to ensure that the reader understood that—in response to a request by property owners to the west—some internal shifting of lot locations occurred, but the overall development footprint remained the same as that approved by the resource agencies in the 2004 Project HLP Batching meetings (described on page 1-11 of the EIR). It is possible that the request for clarification was based on a mis-quote of the text, as the parentheses in the cited text were not as written in the EIR. No changes to the EIR text are required.

A9. Consistent with the comment, all Project open space, whether or not it is within the Pre-Approved Mitigation Area (PAMA), would be preserved in perpetuity and managed in the same way by a habitat management organization. As stated on page 1-7 of the EIR:

These open space easements include 0.7 acre of allowable fuel modification area within steep slope easements adjacent to lots 11 and 33; 0.7 acre of open space at the far western end of the Project immediately north of Cleveland Trail that the wildlife agencies consider too isolated to retain biological habitat function; and 75.7 acres of biological open space. These open space easements would be managed by a local conservancy approved by the County of San Diego (County) and resource agency staff to preserve its biological value.

A10. Comment noted. As stated on page 2.2-12 of the EIR, no trails (public or private) are proposed in the open space preserve. Some trails currently exist within this area, but they would not be maintained and, to the extent they are not used by wildlife, would be expected to be covered by vegetation over the long term. No uses other than open space retention/wildlife functions are proposed for the open space. Also, as noted on pages 1-8, and 2.2-21 of the EIR and re-iterated here:

Open space signs identifying restricted access would be required along the open space boundaries within the site. These signs would be a minimum of six by nine inches in size and would be attached to posts not less than three feet in height. The signs will incorporate the following wording:

Sensitive Environmental Resources
Disturbance Beyond this Point is Restricted by Easement

Information:
Contact County of San Diego, Department of Planning and Land Use
Ref: 02-08-047

Staff will add the trail exclusion to the text of the final HLP. In addition, the draft HLP conditions (item A) for the recordation of the open space easements do not include a trail easement as an exception or allowed use.

ATTACHMENT A

PREVIOUS JANUARY 30, 2006 JOINT WILDLIFE AGENCY COMMENT LETTER (8 PAGES):

MITIGATED NEGATIVE DECLARATION AND DRAFT HABITAT LOSS PERMIT FOR THE SUGARBUSH
RESIDENTIAL DEVELOPMENT PROJECT, COUNTY OF SAN DIEGO, CALIFORNIA (TM 5295RPL, LOG
No. 02-08-047).

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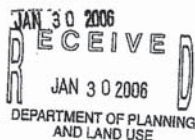
U.S. Fish and Wildlife Service
 Carlsbad Fish and Wildlife Office
 6010 Hidden Valley Road
 Carlsbad, California 92011
 (760) 431-9440
 FAX (760) 431-5902 + 9618



California Department of Fish & Game
 South Coast Region
 4949 Viewridge Avenue
 San Diego, California 92123
 (858) 467-4201
 FAX (858) 467-4299

In Reply Refer To:
 FWS-SDG-3838.2

Gary L. Pryor, Director
 County of San Diego
 Department of Planning and Land Use
 5201 Ruffin Road, Suite B
 San Diego, California 92123-1666



Attn: Robert Hingtgen

Re: Mitigated Negative Declaration and Draft Habitat Loss Permit for the Sugarbush Residential Development Project, County of San Diego, California (TM 5295RPL, Log No. 02-08-047)

Dear Mr. Pryor:

The California Department of Fish and Game (Department) and the U.S. Fish and Wildlife Service (Service), hereafter collectively referred to as the Wildlife Agencies, have reviewed the draft Mitigated Negative Declaration (MND) and draft Habitat Loss Permit (HLP), dated December 15, 2005, for the above-reference project. The comments provided herein are based on information provided in the draft HLP; the biology report for the project, dated October 19, 2004; meetings on March 4, 2003 and April 14, 2004, with the Wildlife Agencies, San Diego County (County) staff, and project applicant; our knowledge of sensitive and declining vegetation communities in the County; and our participation in regional conservation planning efforts.

The primary concern and mandate of the Service is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA), Sections 15386 and 15381, respectively. The Department is responsible for the conservation, protection, and management of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA), and administers the Natural Community Conservation Planning Program (NCCP).

The project site is located at the southern terminus of Sugarbush Drive, and western terminus of Cleveland Trail and Lone Oak Lane, within the unincorporated area of San Diego County. The



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Gary L. Pryor (FWS-SDG-3838.2)

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proposed project includes the development of 45 residential lots on a 115.5-acre site, the extension of Sugarbush Drive for primary access, and associated fuel modification.

Our review of draft habitat evaluation maps of the North County Multiple Species Conservation Program (NCMSCP) indicates that native habitat on and immediately off site is of "very high" habitat quality and that the project site is located within a draft Pre-approved Mitigation Area (PAMA). According to the October 19, 2004, biology report by Helix Environmental Planning, Inc., the project site is composed of the following habitat types: coast live oak woodland (0.9 acre; CLOW), Diegan coastal sage scrub (91.7 acres; CSS), coastal sage-chaparral scrub (2.8 acres; CSCS), coyote brush scrub (0.3 acre; CBS), annual grassland (13.5 acres; AG), eucalyptus woodland (0.2 acre; EW), non-native vegetation (2.0 acres; NNV), disturbed (3.7 acres; DIST), orchard (0.1 acre; ORCH), and developed (0.3 acre; DEVL). The proposed project would impact 23.1 acres of CSS, 0.4 acre of CLOW, and 11.1 acres of AG. Impacts to CSS would be mitigated at a 2:1 ratio, impacts to CLOW would be mitigated at a 3:1 ratio, and impacts to AG would be mitigated at a 0.5: 1 ratio. All proposed mitigation would occur on-site through the dedication of a 76.2-acre biological open space easement.

Sensitive species observed on site include the federally listed threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher), red-shouldered hawk (*Buteo lineatus*), and turkey vulture (*Cathartes aura*).

The Wildlife Agencies met with the project applicant on March 4, 2003, and April 14, 2004, to discuss our concerns regarding the potential effects of the proposed project design on regional habitat connectivity. At that time the applicant was proposing to develop 47 lots on the project site with nine lots located in the northwestern corner of the project site, three lots located along the northern border of the project site (at the entryway to the project site), and the remaining lots spreading throughout the southern portion of the project site. The project proposed in 2003 would have provided only small, highly fragmented open space areas throughout the project site and would have directly impacted the on-site pair of gnatcatchers. At the March 4, 2003, and April 14, 2004, meetings we recommended the following: 1) project impacts should be "clustered" in the southwestern portion of the project site to provide large blocks of contiguous open space on-site and avoid direct impacts to on-site gnatcatchers; 2) due to the high quality habitat on-and immediately off-site, all project impacts should be fully mitigated on the project site; 3) a minimum 500-foot wide open space area should be provided along the southeastern portion of the project to maintain connectivity to off-site native habitats and a core population (i.e. 5 or more pairs) of gnatcatchers to the east; and 4) the extension of Sugarbush Drive should be removed from the project and primary access to the proposed project should occur from the west or south. The currently proposed project has addressed all of these project design concerns except the extension of Sugarbush Drive across the project site.

Based on our review of the MND and the consistency of the proposed project with the interim CSS loss criteria established in the NCCP under the section 4(d) Special Rule of the Federal Endangered Species Act of 1973, as amended, the Wildlife Agencies make the following comments and recommendations:

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Gary L. Pryor (FWS-SDG-3838.2)

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1. As proposed, the project would extend Sugarbush Drive diagonally across the project site to provide primary access to the development, thereby bisecting the largest block of the proposed 76.2-acre on-site biological open space. The proposed access road (and associated traffic) within the proposed biological open space is a source of edge effects and may increase direct impacts to on-site wildlife through road mortality.

Edge effects are defined as undesirable anthropogenic disturbances beyond urban boundaries into potential reserve habitat (Kelly and Rotenberry 1993). Edge effects, such as disturbance by humans and non-native predators (pets), exotic ants, trampling, noise, and lighting, and decreases in avian productivity (Andren and Angelstam 1988), are all documented effects that have negative impacts on sensitive biological resources in southern California. Surrounding natural habitat could be permanently destroyed by human or domestic animal encroachment, trampling, bushwhacking, and frequent fires; therefore, development and open space configurations should minimize adverse edge effects (Soulé 1991).

Our review of draft habitat evaluation maps of the NCMSCP indicates that the project site lies within an area that has "very high" habitat value for and the project site is located within the draft NCMSCP pre-approved mitigation area (PAMA). Because of this, and because, the habitat within the biological open space easement is considered mitigation for the loss of on-site CSS, AG, and CLOW, it is necessary to ensure that the remaining native habitats on-site retain or improve their biological functions and values. Therefore, it is important to avoid or minimize the potential long-term edge effects that may compromise these biological functions and values. Accordingly, we recommend that the extension of Sugarbush Drive be eliminated from the proposed project and that primary access to the project be obtained from the south or west. If removal of the extension of Sugarbush Drive is not feasible, we request that the final HLP and MND discuss why its removal is infeasible. In addition, if the extension of Sugarbush Drive remains part of the proposed project, we recommend that the road be designed to provide for wildlife movement through the incorporation of large box or arch underpasses or overpasses.

2. The draft HLP is conditioned to prohibit all brushing, clearing, and grading during the gnatcatcher breeding season (February 15- August 30). In addition, we recommend that the HLP conditions include the following: if construction is necessary adjacent to preserved habitat during the breeding season, pre-construction protocol surveys shall be conducted in the adjacent habitat to determine the location of any nesting birds. The Wildlife Agencies will be notified if any nesting birds are found. The Service recommends that during construction, no activity shall occur within 500 feet of active nesting territories of the gnatcatcher, unless measures are implemented to minimize the noise and disturbance to those adjacent birds; exceptions to this measure include cases where surveys for the gnatcatcher confirm that adjacent habitat is not occupied or where noise studies confirm that construction noise levels are below 60 dBA hourly L_{eq} in adjacent gnatcatcher habitat. If construction activities are not completed prior to the breeding season and noise levels exceed this threshold, noise barriers shall be erected to reduce noise impacts to occupied habitat to below 60 dBA hourly L_{eq} and/or the culpable

A11.Refer to Response to Comment A1.

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activities shall be suspended.

3. A management and monitoring plan (MMP), including a funding commitment, should be developed for the on-site biological open space easement, and implemented in perpetuity to protect the existing biological functions and values. The applicant should identify an appropriate natural lands management organization, subject to approval by the County and Wildlife Agencies. The organization should prepare a management plan which must be reviewed and approved by the County and Wildlife Agencies. The management plan should outline biological resources on the site, provide for monitoring of biological resources, address potential impacts to biological resources, and identify actions to be taken to eliminate or minimize those impacts. The applicant should complete a Property Analysis Record (PAR) or an equivalent method to determine the amount of funding needed for the perpetual management, maintenance and monitoring of the biological conservation easement areas by the natural lands management organization. In-perpetuity funding may be accomplished through establishment of a non-wasting endowment or, if approved by the County and Wildlife Agencies, through the creation of a Landscape and Lighting Facilities District through the local government. The applicant should demonstrate how the funding mechanism they propose to use will ensure that adequate funds will be available on an annual basis to implement the MMP. The natural lands management organization should submit a draft MMP, PAR results, and proposed funding mechanism to the Wildlife Agencies for approval prior to initiating construction activities. The funding mechanism should be established prior to the initiation of construction, and the MMP should be implemented prior to, or concurrent with, the initiation of construction.

4. Evidence that all on-site mitigation areas have been placed within a biological open space easement should be provided to the Wildlife Agencies prior to impacts occurring on the project site.

5. In order to avoid and minimize project related impacts to on- and off-site native habitats and species, we recommend that the following conditions be added to the HLP:

- a) A monitoring biologist approved by the County and Service will be on site during initial clearing and grubbing of habitat within 500 feet of native habitat to ensure compliance with all conditions. The biologist must be knowledgeable of gnatcatcher biology and ecology. The biologist will perform the following duties:

- i. Perform a minimum of three focused surveys, on separate days, to determine the presence of gnatcatchers within the project impact footprint outside the gnatcatcher breeding season. Surveys will begin a maximum of seven days prior to performing vegetation clearing/grubbing and one survey will be conducted the day immediately prior to the initiation of remaining work. If any gnatcatchers are found within the project impact footprint, the biologist will direct construction personnel to begin vegetation clearing/grubbing in an area away from the gnatcatchers. In addition,

A12.Refer to Response to Comment A3.

A13.Refer to Response to Comment A4. With regard to funding, the County agrees that two options for funding of open space management include a one-time endowment or use of a Lighting and Maintenance District. Should a one-time endowment by the Applicant be chosen, completion of a property analysis record would occur as part of the negotiations with the habitat manager. Determination of funding is required as part of the Final HMP, and would be determined prior to initiation of construction.

A14.The County concurs with this comment. Dedication of the open space would precede the application for an HLP. Therefore, evidence of all mitigation requirements will be available before the County and wildlife agencies finalize the HLP.

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the biologist will walk ahead of clearing/grubbing equipment to flush birds towards areas of CSS to be avoided. It will be the responsibility of the biologist to ensure that gnatcatchers will not be injured or killed by vegetation clearing/grubbing. The biologist will also record the number and location of gnatcatchers disturbed by vegetation clearing/grubbing. The applicant will notify the Service at least seven days prior to vegetation clearing/grubbing to allow the Service to coordinate with the biologist on bird flushing activities;

- ii. Perform a minimum of three focused surveys, on separate days, to determine the presence of gnatcatchers, nest building activities, egg incubation activities, or brood rearing activities in or within 500 feet of the project impact limits of any vegetation clearing/grubbing or project construction proposed within the gnatcatcher breeding season. The surveys will begin a maximum of seven days prior to vegetation clearing/grubbing or project construction and one survey will be conducted the day immediately prior to the initiation of work. The applicant will notify the Service at least seven days prior to the initiation of surveys, and within 24 hours of locating any gnatcatchers.

If a nest is found in or within 500 feet of initial vegetation clearing/grubbing or project construction, work will be postponed within 500 feet of the nest. The applicant will contact the Service to discuss: 1) the best approach to avoid/minimize impacts to nesting birds (e.g., sound walls); and 2) a nest monitoring program acceptable to the Service. Subsequent to these discussions, work may be initiated subject to implementation of the agreed upon avoidance/minimization approach and nest monitoring program. Nest success or failure will be established by regular and frequent trips to the site, as determined by the biologist and through a schedule approved by the Service. The biologist will determine whether bird activity is being disrupted. If the biologist determines that bird activity is being disrupted, the applicant will stop work and coordinate with the Service to review the avoidance/minimization approach. Coordination between the applicant and the Service to review the avoidance/minimization approach will occur within 48 hours. Upon agreement as to the necessary revisions to the avoidance/minimization approach, work may resume subject to the revisions and continued nest monitoring. Nest monitoring will continue until fledglings have dispersed or the nest has been determined to be a failure, as approved by the Service;

- iii. Inspect the temporary fencing and erosion control measures adjacent to native habitat areas a minimum of once per week and daily during all rain events to ensure that any breaks in the fence or erosion control measures are repaired immediately;

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- iv. Periodically monitor the work area to ensure that work activities do not generate excessive amounts of dust.
 - v. Train all contractors and construction personnel on the biological resources associated with this project and ensure that training is implemented by construction personnel. At a minimum, training will include: 1) the purpose for resource protection; 2) the conditions given in the HLP that should be implemented during project construction; 3) environmentally responsible construction practices; and 4) the protocol to resolve conflicts that may arise at any time during the construction process;
 - vi. Halt work, if necessary, and confer with the Service to ensure the proper implementation of species and habitat protection measures. The biologist will report any violation to the Service within 24 hours of its occurrence;
 - vii. Submit weekly letter reports (including photographs of impact areas) to the Service during clearing of native habitat and/or project construction within 500 feet of avoided habitat. The weekly reports will document that authorized impacts were not exceeded, work did not occur within the 500-foot setback except as approved by the Service, and general compliance with all conditions. The reports will also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports will specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes should be available upon request by the Service; and
 - viii. The biological monitor will also submit a final report to the Service within 60 days of project completion documenting that authorized impacts were not exceeded and that general compliance with all conditions of this biological opinion was achieved.
- b) The applicant will ensure that the following conditions are implemented during project construction:
- i. Employees will strictly limit their activities, vehicles, equipment, and construction materials to the project site;
 - ii. To avoid attracting predators of native wildlife, the project site will be kept as clean of debris as possible. All food related trash items will be

A15. Refer to Responses to Comments A3 and A5. Specifics regarding survey requirements are assumed per the mitigation measure requirements to perform pre-construction protocol surveys. The requirement to check temporary fencing and erosion control measures adjacent to sensitive habitat a minimum of once a week and daily during rain events would occur as part of the biologist's daily visits during clearing, grubbing and grading activities (see M-BI-4, bullet two, on page 2.2-21 of the EIR). Access to the site would be substantially curtailed during construction as the site would be fenced and access from Sugarbush Drive would be closed to any other than construction vehicles. Immediately following conclusion of grading, the permanent signs restricting access to on-site open space would be set in place (see M-BI-4, bullet four). Erosion is not anticipated to constitute a concern following grading (especially as most of the sensitive habitats on site would be upslope from construction activities), but would be addressed per environmental design considerations detailed in Section 7.2.4 (page 7-13) of the EIR. Dust would be controlled per environmental design considerations detailed in Section 7.2.1 (page 7-11) of the EIR for air quality controls. Contractor and construction personnel training regarding sensitive site resources constitutes a routine part of monitoring responsibility, and includes identification of resources and protocols for construction personnel relayed via pre-construction meetings and in flyers maintained in the on-site construction trailer. This would be reinforced by the daily visits by the Project biologist during the clearing, grubbing and grading periods. Evidence of the contract for biological monitoring is required prior to issuance of grading or construction permits. As part of the HLP process, the contract for biological monitoring shall also be submitted to the wildlife agencies for review and approval. Weekly letter reports documenting the monitor's findings would be submitted to DPLU. The final summary report would be transmitted to the USFWS per the comment request. Raw field notes would be made available to USFWS staff if requested. No text changes to the EIR are required based on this comment.

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- enclosed in sealed containers and regularly removed from the site;
- iii. Night lighting, if any, of construction staging areas will be of the lowest illumination necessary for human safety, selectively placed, shielded, and directed away from adjacent natural habitats;
 - iv. Development lighting adjacent to off-site native habitat areas will be directed away from and/or shielded so as not to illuminate native habitats;
 - v. If work occurs beyond the limits of the project impact area, as demarcated by the temporary construction fencing, all work shall cease until the problem has been remedied to the satisfaction of the Agencies. Any habitat impacts that occur beyond the fenced area shall be mitigated at a minimum 5:1 ratio;
 - vi. Impacts from fugitive dust will be avoided and minimized through watering and other appropriate measures; and
 - vii. Development landscaping will not include exotic plant species that may be invasive to adjacent native habitats. Exotic plant species not to be used include those species listed on Lists A & B of the California Invasive Plant Council's (Cal-IPC) list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999." This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained from CAL-IPC's web site at <http://www.cal-ipc.org>.

If you have any questions or comments pertaining to this letter, please contact Michelle Moreno (Service) at (760) 431-9440, or Meredith Osborne (Department) at (858) 636-3163.

Sincerely,



Therese O'Rourke
Assistant Field Supervisor
U.S. Fish and Wildlife Service



Michael J. Mulligan
Deputy Regional Manager
California Department of Fish and Game

A16. The County concurs that the listed items should be included in the Draft HLP, and comment A16 items i through vi were included in Draft HLP dated October 7, 2009 as condition of approval A.8. In addition, comment A16 b)i is required by the grading plan. All impacts must occur within the areas identified by the grading plan and avoid those areas placed in open space, which would be dedicated and fenced prior to grading activities. A16 b)ii is required by the Storm Water Management Plan as solid waste management is one of the construction BMPs that would be employed. A16 b)iii is addressed by Project design. A16 b)iv is addressed by Section 6324c of the Zoning Ordinance. For A16 b)v, the biological monitor would notify County staff if any grading occurs outside of authorized areas. County staff, in consultation with the Wildlife Agencies, would then require appropriate mitigation. A16 b)vi is addressed with implementation of the County's Grading Ordinance. A16 b)vii is addressed with implementation of the required Landscape Plan. The planting legend of the Conceptual Landscape Plan does not contain any of the listed plants.

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TWIN OAKS VALLEY COMMUNITY SPONSOR GROUP

P.O. Box 455

San Marcos, Ca. 92079
November 23, 2009

Mr. Robert Hingtgen
San Diego County Department of Planning and Land Use
5201 Ruffin Road
San Diego, CA 92123

Re: Draft EIR SUGARBUSH RESIDENTIAL DEVELOPMENT PROJECT;
GPA 05-010; SP03-003; R04-008; TM 5295RPL7; S04-015; LOG NO. 02-08-
047

Dear Mr. Hingtgen,

We appreciate the opportunity to respond to the Draft Environmental Impact Report (DEIR) for the Sugarbush Residential Development Project. We hope that our comments will help guide the County and the project applicant to create a project that will be a benefit to the applicant as well as the community of Twin Oaks. We believe that protection of natural resources and community character are directly linked to quality of life and that this project would have numerous adverse impacts.

One of our concerns is the continued use of the General Plan Amendments and Major Use permit process to create projects that do not follow the existing General Plan in detail or even in spirit. We believe that the cumulative impacts of this project, Merriam Mountains, Terry, and Casa De Amparo stand to undermine the existing General Plan and the current General Plan Update process.

When you look at Figure 3.1.4-1, Existing County General Plan Land Use you see that the proposed ½ acre lots are smaller than the adjacent zoning on any side of the project. The DEIR references a project zoned for Mobile Homes as a justification for the smaller lots. The referenced project is the Verona Hills Development, built in the early 1990s; it sits on land zoned RMH- Residential Mobile Homes. This project is really an anomaly in the area and it's unclear how

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this project got this zoning. According to residents and Real-estate agents in the area, the project is not comprised of mobile homes but rather homes made from modular components. The mobile home designation allowed the developer to get a density he may not have gotten without the RMH designation. Therefore using this project to justify the compatibility of the Sugarbush project is faulty reasoning. In fact, you would only reference the Verona Hills project as an example of bad land use zoning since the conflicts between it and the adjacent industrial agricultural operation to the South are well known in the area.

COMMENTS TO PROJECT DESCRIPTION

Comment 1: Page 1-5 states, "... semi-custom approach of three to four floor plans, using two to three architectural styles per floor plan and two to three color schemes per architectural style. Various combinations of floor plans, architectural styles and color schemes would allow for a minimum of 12 different housing elevations. The Project would be conditioned to require these 12 different elevations, based on a minimum of 3 different floor plans, 2 architectural styles per floor plan, and 2 color schemes per architectural style, in order to reduce or avoid the potential for a "cookie cutter"

Although the variation of building style will help soften the "cookie cutter" look the fact is that the pads are arranged in a "cookie cutter" fashion, along long straight streets, in a straight line, and therefore the proposed project is typical of "cookie-cutter" tract type housing development. The pads and homes need to be staggered and angled in order to eliminate the "cookie cutter" look, which is not in keeping with adjacent community character. The two long straight streets need some variation to soften the look and encourage traffic calming within the development. Driveways and entries also need to convey a non-cookie cutter look by having various angles of approach, varied landscape elements, and a variety of hardscape treatments. To minimize the disparity with the adjacent community, the project should limit the building footprint so that dwelling and other structures cannot cover the whole buildable pad. Keeping a ratio of the size of open yards to the size of the building pads that is similar to the adjacent community would help the project fit in and prevent it from becoming a tract version of Mc Mansion style homes that tend to cover the entire pad and leave little space landscape or for children to play. Since page 3.1-42 says "the design theme utilized by the Project applicant in other developments", please provide photos of a similar projects that demonstrate how the applicant plans to avoid the cookie-cutter look.

Comment 2: On page 1-6, the DEIR talks about the retaining walls throughout the site. Some of these walls are nine feet high and 90 feet long. Because of graffiti problems associated with un-landscaped surfaces, all walls visible from outside the development **MUST** be screened with landscaping. An example of why this is important is seen in the nearby sound wall at the corner of Monte Vista and Buena

B1. The County does not agree that the proposed lots are smaller than the adjacent zoning to the west of the Project. As stated on page 3.1-49 of the EIR, "the proposed S88 zoning for the Project site has the same minimum lot size (0.5 acre), animal regulations, building type, and allowable agricultural use types (horticulture, tree crops, and row and field crops) as the Rural Residential zoning of the adjacent Lone Oak Lane and Lone Oak Road neighborhood to the west."

With regard to the Verona Hills development (with lots smaller than the Proposed Project), the information was provided as part of a summary of the mix and overall variety of development in the vicinity. Information on the existing Sugarbush Drive residential uses (larger lots than the Proposed Project) and Highview Trail development (roughly equivalent lots to the Proposed Project) also was presented for reference. Although no change to text is proposed to the EIR, as a matter of existing conditions, please note that the July 17, 2009-approved Kawano subdivision (located north of proposed Sugarbush on the north side of Buena Creek Road) subdivided a total of 10.27 acres into eight lots ranging in size from 0.69 to 1.73 net acres (very similar to the proposed Sugarbush project).

B2. Comments noted. The issue of whether the project is compatible with the existing community will be before the decision makers during Project deliberations. It should be noted, however, that community character is much more than lot configuration and size. The community is not defined by the patterns of its streets and lots, but rather by the sequences of the spaces created by the dwellings and the open space adjacent to them. The large open space and the compact subdivision design promote a sense of place and a sense of character.

The street layout is preferred by the Fire Marshal and DPW. Regarding lot size and residential layout, as noted on page 3.1-49 of the EIR, "although lot pads shown on the Tentative Map and Site Plan appear uniform, that does not necessarily mean that housing would reflect this uniform layout. The reasons for this are that the buildable portion (area and shape) of each lot varies based on the setbacks and future homes may be located anywhere inside that buildable portion of the lot."

The project is proposing varying lot sizes with varying lot widths and varying front yard setbacks. This will allow garages to be turned away from the street to create a more interesting and appealing streetscape. In addition, planned structures would not cover the entire buildable portions of the lots. Proposed lots range from 0.50 acre to 1.73 acres, with an average resulting lot size of 0.78 acre. Within these lots, pads would range in size from 10,554 to 21,923 square feet. Within these pads, there is also variation regarding usable area. For example, buildable pad area on Lot 1 would be 7,339 square feet within the 13, 254 square foot pad. Buildable area on Lot 8 would be 7,272 square feet within the 20,934 square foot pad. The average pad area for the 45 residential lots is 16,273 square feet. The average buildable area within these pads would be 9,080 square feet.

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Creek Road. The poor design created an architectural feature, namely a graffiti covered wall, that is not only totally out of character with the adjacent community but creates significant maintenance costs for the homeowners. We do not want additional blight attracting elements in the area and ask that all walls and solid fences be vegetated. Hardscape, especially un-vegetated walls, also amplifies sound by reflecting it back toward the road and neighboring properties, creating heightened levels of noise pollution.

Comment 3: Page 1-6, Walls and Fencing refers repeatedly to the lot E and F but these lots don't appear to be shown on the Site plan. Are these the open space or retention basin lots?

Comment 4: Regarding the Site Plan, there are a lot of easements running through the open space. Did the applicant and County Staff make the Wildlife Agencies aware of these easements and possible impacts they would have on the biological open space? If so, please provide documentations specific to this issue.

Comment 5: On page 1-7, Open Space, it states, "*These open space easements would be managed by a local conservancy...*" Does this refer only to the 75.7 acres of biological open space or does it also include the area "*...wildlife agencies consider too isolated to retain biological habitat function...*" and/or the 0.7 acres of fuel modification open space? If these other areas are not to be managed by a local conservancy, the entity which will manage them must be specified.

Comment 6: On page 1-7, Landscaping. The plan sounds generally appropriate but there isn't enough detail to ensure the landscaping will soften the block walls and provide the character found in a rural community. Please provide a Landscape Plan for the site so the public can understand how the landscaping will ensure mitigation measures listed in the DEIR's will actually minimize visual impacts of the proposed project. Please list the size of trees that will be planted.

Comment 7: On page 1-8 there are restrictions on street lighting. These restrictions are good but often homeowner's will add additional lighting that adds light pollution to the biological open space as well as adjacent neighbors yards. CC&Rs should be integrated into the project that covers allowed outdoor, landscape and architectural lighting.

Comment 8: Finally, under Detention/Bioretenction Basins, it appears Buena Creek is being used to take storm water runoff from the site. Is this a Limited Impact Development (LID)? What design measures in addition to the retention basins are being used to keep storm water on site and to prevent polluted water from leaving the site?

Regarding driveways and hardscape treatments, the project utilizes varying road widths, and driveways would vary as a result of dwelling setback and lot orientation, as well as hardscape material (e.g., concrete). Streetscape elements incorporate decomposed granite pathways as opposed to concrete sidewalks and split rail fencing, both of which reference a rural rather than urban setting.

B3. The proposed walls would be treated with an anti-graffiti coating and maintained by the Homeowners' Association (HOA). Costs for maintenance would be borne by the Sugarbush HOA and not by the abutting property owners. The location and visibility of Project walls are detailed on pages 2.1-15 through 2.1-17 of the EIR.

The following summary is provided for clarification. The proposed fire walls would be sited between native vegetation and the proposed development. These walls would not be landscaped on sides facing native habitat. To the south and east, non-irrigated native habitat would abut the fire walls. No viewers would see the walls east of the Project as a large hill located within permanent open space is located east of the proposed wall. To the south, viewers are relatively distant (approximately one-quarter mile away across a large canyon) and limited in number. The distance, as well as native scrub located between the wall and viewers, would attenuate any graffiti that might occur over the short-term. Fire walls located within detention/bioretenction lots would be sited east-west, and would not present a wall "face" to off-site viewers. With regard to landscaping the fire wall along Cleveland Trail, the wall is being installed to circumvent removal of sensitive vegetation north of the road and the proposed wall. The presence of this vegetation, combined with a developed lot to the south of Cleveland Trail, result in a constrained space within which to site the improved emergency access road and the fire wall. Placing vegetation along a fire wall would be contrary to the purpose of the wall, which is to provide fire fighters and emergency access vehicles a clear route, without abutting vegetation that might flame up. A maximum of two residences are in proximity to this proposed wall, but both structures are aligned north-south, and do have direct views to the proposed wall.

Retaining walls primarily would be associated with roadway improvements to Cleveland Trail as well as detention/bioretenction lots E and F and Lot 21. East of Sugarbush Drive along the south side of Buena Creek Road, slope modification would occur for approximately 165 feet in length with a maximum height of eight feet, and a retaining wall of earth-toned slump stone would be installed, ranging from zero to five feet in height. Excluding the wall along Buena Creek Road, most of these walls would not be visible to a large group of viewers, if visible at all. The retaining walls within the detention/bioretenction basins generally vary in size from one to five feet in height and would not be visible to neighboring properties as they would be down slope and fenced off from potential graffiti artists, as well as from viewers. The nine-foot section at the proposed emergency turnaround area is generally downslope and lateral to potential viewers. For the one-to-three foot retaining wall along Cleveland Trail, the reader is referred to the discussion of the fire wall in the paragraph above. In addition, the retaining wall would be located

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on the south side of the road and down slope from any potential viewers on the abutting lots. The Buena Creek Road wall would be similar to privacy walling in the vicinity (see page 2.1-9 of the EIR).

Given the general lack of visibility, the distance of the majority of viewers from the development, the very low number of potential viewers to the development overall, and the use of the anti-graffiti coating, as well as the required maintenance of all project features, the potential for blight related to on-site walls would be less than significant. With regard to the single retaining wall of varying height along Buena Creek Road, the wall would be subject to routine County maintenance. Riparian vegetation and rural residential properties (some with substantial vegetation) are located in the immediate vicinity. Any contribution to "blight" in this area resulting from this single design element would be less than significant.

Regarding amplification of sound, most of the Project walls would be interior to the development, as described above, and would not deflect sound to off-site uses. The fire wall aligned along Cleveland Trail would not amplify traffic sound due to the low volume of trips (associated only with the one to two homes at the east end of the existing Trail alignment). Assuming such amplification could occur, the retaining wall along Buena Creek Road east of Sugarbush Drive would result in less than significant effects due to post-construction conditions being very similar to the existing condition (a steep slope) and its relatively small extent (overall, the retaining wall would range from zero to five feet in height).

B4. Lots E and F, as well as proposed fire walls, are depicted on Figure 1-1 of the EIR. These lots are labeled as the detention/bioretenion basins.

B5. The Draft EIR and Biological Technical Report (BTR) were provided to the Wildlife Agencies. Each of these documents contains a figure (EIR Figure 2.2-4A and BTR Figure 5a) that shows the easements on site. (It should be noted that many easements would be coalesced into common rights-of-way and/or abandoned/vacated if the Project is approved.) Both United States Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) staff have met with County staff and the Applicant and have reviewed the Proposed Project in detail. USFWS did not comment on the EIR. Their previous comments (provided in an earlier joint letter with CDFG staff in 2006) were addressed in the Draft EIR. CDFG staff did provide comments on the Draft EIR. Their comments, and responses to them, are provided in Letter A of this Final EIR.

B6. All of the open space noted in the comment would be managed by a single entity. As the commentor notes, page 1-7 of the EIR cites the open space to be managed by a single entity:

...open space easements include 0.7 acre of allowable fuel modification area within steep slope easements adjacent to lots 11 and 33; 0.7 acre of open space at the far western end of the Project immediately north of Cleveland Trail...; and 75.7 acres of biological open space. These open space easements would

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be managed by a local conservancy approved by the County of San Diego (County) and resource agency staff to preserve its biological value.

B7. The conceptual landscape plan is included in the EIR as Figure 2.1-10. Final specifications regarding size of container plants will be provided with the final grading plan. In the meantime, however, the County Grading Ordinance states minimum requirements with which the Project must conform as a matter of law. Per County Grading Ordinance Section 87.417, Planting:

(b) Minimum Requirements. In addition to planting with ground cover, slopes in excess of fifteen feet in vertical height shall be planted with shrubs having a one gallon minimum size or trees having a five gallon minimum size. The maximum spacing for shrubs and trees shall be ten feet on center each way. The planting pattern, but not the minimum quantity, may be varied upon the recommendation of landscape architect and approval by the County Official.

B8. All lighting would adhere to the County of San Diego's Dark Sky Ordinance. Lighting design would include the use of shields and full cut-off light fixtures to ensure that light rays are projected downward and that glare and spillage into the sky or onto adjacent property (including open space) are limited. Abutting neighbors would be downslope from the western boundary of the Project. Yard lighting would be upslope and is anticipated to be focused on usable portions of the lots. Any spill into off-site yards would be expected to be minimal. No neighbors are located adjacent to southern, eastern or northern portions of the development bubble. With regard to open space, lighting of yard areas would be expected to coincide with the areas inside the fire walls. Any spill into protected biological open space would be noted by the Habitat Manager required as part of open space management. The biological open space, and restrictions concerning it, will comprise part of the information provided by the developer to purchasers of the homes. If lighting is assessed by the Habitat Manager as potentially resulting in adverse effects to Project sensitive species, s/he would coordinate with the HOA regarding light spill and the property owner would be required to modify their outdoor lighting.

B9. The Sugarbush Project has been designed to be a Low Impact Development (LID). Buena Creek is the ultimate "Receiving Water" for the site; i.e., treated storm waters would be released into Buena Creek. The detention/bioretenion basins themselves would filter stormwater/site runoff anticipated to reach the Buena Creek drainage. As stated on page 1-8 of the EIR: The basins are designed to have high pollutant removal capacity for coarse sediment, trash and pollutants such as nutrients, heavy metals and pesticides..." The Project would incorporate LID techniques to reduce runoff and pollutants from the proposed development area. As stated on page 3.1-32, "LID measures are intended to mimic predevelopment hydrologic conditions by using design practices and techniques to effectively capture, filter, store, evaporate, detain and infiltrate runoff close to its source."

LID strategies proposed for this project include:

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1. Conservation of natural areas, soils, and vegetation by providing 67 percent of the site as permanent open space.
2. Minimization of disturbance to natural drainages by setback development envelopes, and restriction of heavy construction equipment access to planned open space areas.
3. Minimization and disconnection of impervious surfaces by clustered lot design, and drainage of runoff from impervious surfaces to pervious areas.
4. Minimization of soil compaction by restricting heavy construction equipment access to planned open space.
5. Proposed vegetated swales on each lot (LID building design; down spout to swale).
6. Drainage of driveways into landscaped areas where practicable.
7. LID landscaping design, soil amendments, reuse of native soil, and smart irrigation systems.

In addition, the Project would implement site design, source control, and treatment control BMPs as described on pages 3.1-32 and 3.1-33 of the Draft EIR. No changes are required to the EIR text as a result of this clarification.

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Comment 9: On page S-1 and S-2, the DEIR it states, *"The slopes that would be created along the western Project boundary would range in size from approximately 30 feet to 42 feet in height, and would be created along approximately 1,520 linear feet of the 2,600-linear foot western property line."*

We are concerned that the use of 30ft. to 42 ft high slopes, in addition to the 30 ft high two-story dwellings along the Western boundary will not only significantly impact the sense of privacy for residents to the west of the project but may also reduce the amount of light now present in existing backyards in homes west of the proposed project. In Cross-section "A" in figure 2.1-9A, it shows the development but not the developments relationship to existing homes to the West. Although the dwellings are set back 100 ft from the property line that the combined dwelling and slope will be from 60 feet to 72 feet high. This is significant and is not shown in the photos provided in Section 2.1, Aesthetics as it should be.

Will the project cast shadows that will impact adjacent backyard areas? The loss of light may prevent fruit trees and other backyard crops from producing and may shade solar energy equipment. As a result, the quality of life, property value and/or financial yield from adjacent agricultural zoned properties may be impacted. The DEIR doesn't appear to look into this potential impact. We ask that dwellings on the west side be limited to single story. A story pole, shadow study or at the very least, the cross section elevations should included the adjacent residences on the west so that the public can see how the project may impact adjacent homes.

Comment 10: On page S-2 it states, *"Brush clearance and grading would occur on the south side of Buena Creek Road, both east and west of its intersection with Sugarbush Drive in order to establish adequate lines of sight associated with current speeds of cross traffic along Buena Creek Road."*

Will the clearing impact wetland, riparian, or native vegetation and if so, how will it be mitigated?

Comment 11: On page S-3 it refers to a *"Habitat Management Plan (HMP, Appendix H of EIR Appendix D)"*. When I opened Appendix D I did not find Appendix H. Please provide Appendix H.

Comment 12: On page S-4 it refers to *"A retaining wall up to 9 feet in height and 90 feet in length facing northward would be associated with the southern basin on Lot F"*. This wall should be landscaped to prevent graffiti.

Comment 13: On page S-7 it states, *"With regard to other environmental issues, the Proposed Project would be environmentally preferred (in most cases, incrementally) over this alternative, due to the increased amount of affected land associated with*

B10. The County respectfully disagrees that loss of light may be significant. The very large existing landform east of the development bubble is currently, and would continue to be, the primary element controlling sunlight from the east onto abutting properties. While it is acknowledged that post-Project specifics may vary from the existing condition, the abutting slopes would be 2:1 and would allow for sunlight to reach the properties in a way similar to under current conditions. No change from existing conditions would be expected during the afternoon hours. Variation from existing conditions would be less than significant.

The County does not agree with the request to restrict structures along the Sugarbush western property line to one story as a method of attenuating shading impacts. This is based on the less than significant effects identified, as well as the limited effect structures would have on sunlight regardless of height. As discussed in Chapter 1 of the EIR, as well as Subchapter 2.1, a total of eight residences would be located along the western property boundary. Residential structures would not cover the entire lot—light would stream through/between the homes and over the detention/bioretenention basins. With any primary effect resulting from the natural landform, combined with the moving nature of light as the day progresses, impacts related to house height would be less than significant and no change to Project design is required.

The slope along the Project's westerly boundary varies in height, with a maximum height on proposed lot 6 of 42 feet. The slope undulates and is variable, promoting a more interesting view. Although sense of privacy is not a CEQA issue per se, the EIR did discuss it on page 2.1-15. *"The proposed landscaping on the manufactured slopes associated with lots 1 through 8 in the 100-foot building setbacks would buffer existing and proposed uses, and would provide a greater sense of privacy between existing and proposed homes than would the 25-foot setback required under the zoning code."* No additional discussion is required.

B11. Impacts associated with grading/clearing along Buena Creek Road are depicted in Figure 2.2-4B of the EIR and included in the off-site vegetation impacts reported on Table 2.2-4. Such activities would impact Diegan coastal sage scrub, non-native grassland and two coast live oak trees (as well as some habitat that is not considered sensitive). No wetland or riparian habitats would be affected. These off-site impacts would be mitigated via on-site preservation (please refer to page 2.2-20 and Table 2.2-6 of the EIR).

B12. The County checked additional copies of the BTR for Appendix H, and found it to be present in the hardcopies. The County apologizes that it was not within the commenter's copy; however, Appendix H of the BTR was also provided to the public on the County's website.

B13. Please refer to Response to Comment B3.

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the No Project/Existing Zoning Alternative. While this alternative would meet most of the identified project objectives, it might not be possible to accomplish mitigation for upland habitats entirely on site under this alternative."

Although one can understand how this statement might be true relative to the Existing Zoning alternative how is it true for the No Project alternative? Under the no-project alternative one would believe no mitigation would be necessary. What mitigation is needed under the no-project alternative?

Comment 14: On page S-7 and S-8 the Reduced Project Alternative appears to accomplish many of the project goals, addresses many of the neighbors concerns, generates less traffic, and is more closely matched to the existing County General Plan, and is Environmentally Superior to the proposed project. Why is the developer not going with this alternative to begin with? Are there any emails, documents, or staff discussions available relating to this alternative?

Comment 15: In light of the above, and lowered level of mitigation of Diegan Coastal Sage scrub from 3:1 to 2:1 (BI-1b), we disagree with Summary of Significant Effects in Table S-1 on page S-8 which finds all of the impacts "Less than Significant". Who makes this call? Is this a determination by the Wildlife Agencies?

COMMENTS TO SECTION 2.1-1, AESTHETICS

Comment 16: Although the Aesthetics show the project boundary from various points there are no photo simulations to show project massing on the site. No plans, elevations, or story poles have been made available for the public so that they could adequately see the visual impact of the project. With 421 views being impacted, shouldn't more realistic simulations be supplied to adequately show the full impact of the project on Aesthetics and how mitigation measures will address those impacts?

Comment 17: On page 2.1-13, site density, *"The Project's proposed building height would be 30 feet as compared to the 35-foot height allowed in the Lone Oak Lane neighborhood under current zoning, resulting in a minor lessening of vertical mass associated with the proposed structures over that otherwise allowed."*

It should be noted that few homes in the vicinity of the project are two story. The changing of maximum height by five feet does mitigate the massing to a minor amount, but this is overwhelmed by putting the home on a 40-foot high manufactured pad that does not fit with the topography. Please address the actual impacts of the project including the manufactured and unnatural slopes.

B14. Two No Project alternatives are addressed in the EIR: the No Project/No Development Alternative and the No Project/Existing Zoning Alternative. The latter alternative is consistent with CEQA Guidelines Section 15126.6(e)(3)(A) for situations where a revision to a land use plan is proposed. Under the No Project/No Development Alternative, no development would occur. Consistent with the comment, no impacts would occur and no mitigation would be necessary. Under the No Project/Existing Zoning Alternative, the Project site would be developed in accordance with the site's existing zoning and land use designation. As stated on page S-7, "[T]he No Project/Existing Plan Alternative would include 26 residential lots with a minimum lot size of two acres and two lots with detention/bioretenion basins." Development under this existing scenario would result in impacts requiring mitigation.

B15. An Applicant's responsibility is to propose a Project that will meet existing development standards and appropriately mitigate for Project impacts. It is not necessary that the Applicant propose the least impactful development, although the decision makers will review alternatives during Project deliberations. In the current case, the Proposed Project is the result of meetings held and compromises made by the Applicant with County staff, resource agency staff, and abutting property owners, as described on pages 1-11 and 1-12, as well as page 1-15. Please refer to Section 1.2.2.3, Project History/Background for additional detail. The Proposed Project was originally proposed for CEQA evaluation under the Mitigated Negative Declaration review format (a format for which alternatives are not necessary). Although no significant and unmitigable CEQA impacts would result from Project implementation, the County ultimately required preparation of an EIR based on neighbor request. Alternatives were developed in order to comply with CEQA EIR requirements. The Applicant, however, will not make the final decision as to alternative selected for implementation if development on the Project site is approved. With regard to General Plan consistency, the County respectfully disagrees that the Reduced Project Alternative is more closely matched to the General Plan. The theoretical maximum number of dwelling units per the A70 Use Regulations would be 57, and the General Plan addresses clustering under a specific set of criteria (see EIR pages 3.1-42 and 43). The General Plan Amendment proposes a density of 0.39 dwelling units per acre which results in a maximum of 45 dwelling units, clustered to preserve biological habitat and steep slopes.

B16. To clarify, the EIR states that significant impacts would occur, but they would be mitigated to below a level of significance. Impacts to Diegan coastal sage scrub would be mitigated at a 2:1 ratio via on-site preservation. Implementation of this mitigation measure would reduce the impact to a less than significant level because the mitigation ratio for the impact to this habitat was developed based on Natural Community Conservation Planning (NCCP) Guidelines, and the Wildlife Agencies have reviewed and approved this mitigation ratio. This standard ratio has been applied to projects within the County since DPLU developed its first Biological Report Guidelines in the mid-1990s (adopted by the Board of Supervisors). The

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ratio is effective because these reviewing agencies have reached consensus that retention at these ratios will result in sustainable levels of this habitat. In addition, this applied mitigation ratio is greater than the recommended 1.5:1 ratio for this habitat within the Draft North County MSCP Subarea Plan. Although not required as mitigation, an additional 20.7 acres of Diegan coastal sage scrub would be retained on site within dedicated open space as part of Project design. The final conclusion regarding magnitude of impact, and adequacy of proposed mitigation, is the responsibility of the decision makers (here the Board of Supervisors).

B17. The 421 views cited refer to residences within a one-mile radius, and the private roads that access them. Averaged over the potential one-mile viewshed radius, one residence in each five acres potentially would have a view to part of the Project developed area. As stated in the discussion of viewshed, this number is based on topography alone, and does not take into account residential orientation, specific distance/view clarity, intervening landscaping, actual amount of the Project visible, or whether the viewer would be roughly at the same elevation of the Project, or located at an elevation above or below it, etc. Regardless, staff believes that the analysis is adequate.

The Project proposes a total of 45 residences on a 115-acre parcel, with 77 acres retained as open space. Detailed discussion of modified slopes, including grade and height, is provided. Public versus private viewers and potential views are addressed. Less than significant impacts to off-site viewers primarily relate to either distance (in which case the Project would only provide one element within a larger viewshed), the small development footprint of the Project (less than 40 acres overall), and/or Project-mandated landscaping (providing greenery and some structural shielding upon maturity). All of these elements would variously combine to meld the Project into the existing setting. For a very limited number of viewers with more immediate views, substantial changes are acknowledged. These changes, however, do not rise to the level of CEQA significance with regard to character change given the small number of viewers, the lack of impacts to identified view corridors, and implementation of enhanced intervening landscaping as Project mitigation for changes in vegetation. Because of the Project history length and extensive coordination; refer to Section 1.2.2.3 of the EIR, many elements that might otherwise constitute mitigation measures have already been incorporated into Project Design. No additional analysis is necessary.

B18. Although the County respectfully disagrees with the comment, it will be before the decision makers during Project deliberations. With respect to landform, this portion of the County consists of varying terrain. Notable topographic features are visible from virtually any viewpoint in the local area—including steeply sided canyons, steeply sided hills, and more rolling hills. The Project-modified landforms would not appear out of scale with surrounding landforms once grading is complete and landscaping is in place. As discussed in the EIR, slope modification primarily would be visible from adjacent properties west of the Project. Once at the level of development pads, the lot elevations generally follow the underlying natural

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landform. Proposed Project slopes are addressed in detail in the EIR on pages 2.1-11 and 12, and 2.1-14 and 15. No additional analysis is necessary.

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Comment 18: On page 2.1-15, says that the style of architecture will be similar to other projects the developer has developed but there are no drawings or photos to show exactly what this developer has built or how it compares to this project. Please provide photos, address areas, and elevations of existing projects that reflect the density as well as the architectural style of this project.

Comment 19: Page 2.1-15, it states, *"The fire walls located along the eastern portion of the Project theoretically could be visible from the west. They generally would be screened, however, by the residences they protect and interior lot landscaping."*

This statement is confusing. Does it mean the residents will landscape the inner walls (walls facing inward) or does it mean the portions of the walls facing outward that are the most visible from outside views and are the most likely to become targets of graffiti? As previously stated, all exterior walls need to be landscaped so that they don't become covered with graffiti. We can't expect that just because some of the walls are adjacent to an open space, people won't cross the open space and vandalize the walls.

Comment 20: Page 2.1, 18 states, *"...as a result, in terms of long-term impact significance, the views of the Project site from adjacent properties to the west would substantially change. Nonetheless, because of the relatively low number of viewers immediately affected, the consideration that the views lost are not part of identified/adopted view corridors, and consideration that ultimately views would consist mainly of landscaped slopes and/or private backyard landscaping, long-term impacts assessed under CEQA are considered to be less than significant."*

Without proper photo simulations there is no way for the public to know if the above statement is true or false. Please, as previously requested, supply proper photo simulations showing how the project will look.

COMMENTS TO BIOLOGICAL TECHNICAL REPORT

Comment 21: The Biological Technical Report does not mention the project's location in relationship to other County Preapproved Mitigation Areas or PAMAs. The area directly to the South is listed as a County PAMA Area. This area contains the headwaters of Agua Hedionda Creek, a recognized wildlife corridor and a Federally listed Focused Planning Area for the MHCP. This area provides wildlife connectivity to the project site. At this time there is no project currently planned for this area. On page 15, paragraph three, however, it states, *"Projects that would compromise the habitat function in this area are under review or are being planning in the City."* This statement has no detail as to what project (s) the DEIR is referring to or how they would compromise the habitat function. Please list the project or

B19. Several photographs of structures built by the Applicant are attached to the back of these responses. The locations of these projects are in Encinitas, California. While taken from projects with larger homes and a different structure/lot size ratio than is proposed for the Sugarbush Project, the structure articulation would be similar to that shown, including varied roof pitches, wall setback lines and façade finishes.

B20. The fire wall along the eastern property boundary would form the eastern limit of the residential back yard. As such, the walls would not be expected to be visible from the west as residences and landscaping would intervene between westerly viewers and the eastern wall. Please refer to Response to Comment B3 regarding landscaping of fire walls, the lack of viewers to the east and required HOA maintenance.

B21. The County respectfully disagrees. Staff believes that the written description of the changes in abutting slopes is adequate to support the finding of substantial change with regard to easterly views from adjacent properties (please refer to pages 2.1-14 through 2.1-18). For the reasons cited in the EIR excerpt, however, these substantial effects do not rise to the level of a significant impact under CEQA. In and of itself, change does not equal a significant impact. Absent a permanent set aside (e.g., open space in perpetuity), no guarantee is made to one property owner regarding potential uses on private property owned by another.

In this instance, the type of use (residential) is the same as that proposed in the General Plan, no adopted view corridor is being affected, the number of immediately abutting viewers is low (under 10 homes) and the Project would be required to increase slope planting density in order to minimize short-term effects related to slope modification/graded soils. Please refer to Figure 2.1-10 of the EIR for documentation regarding the Project conceptual landscape plan.

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projects that would compromise habitat function, how they would do so, and how this project could help to mitigate these proposed changes.

COMMENTS TO SECTION 3.1, ENVIRONMENTAL EFFECTS FOUND NOT TO BE SIGNIFICANT

Comment 22: On page 3.1-5 it states, "Concentrations of Carbon monoxide (CO) at the Escondido monitoring station tend to be among the highest in the SDAB, due to the fact that the monitor is located along East Valley Parkway in a congested area in downtown Escondido. The station sees higher concentrations of CO than have historically been measured elsewhere in San Diego County and the background data are not likely to be representative of background ambient CO concentrations at the Project site, due to the site's location in a less developed area. Since 2000, CO has not been monitored at other stations in northern San Diego County." However, several factors need to be considered that tie this project into the cumulative impacts to air quality for the area.

First, the Buena Creek Road vicinity is captured on both sides by hilly areas. This traps air pollution, especially car exhaust that could have significant impacts to people living along the Buena Creek Road Corridor if traffic is increased. Second, the County plans to widen Buena Creek Road and therefore it can be anticipated that the air pollution will increase for this area by a significant amount using the County's anticipated LOS and the impacts of the Merriam Mountains Project. All these impacts cumulatively, along with this project, may have significant unmitigatable impacts on the health of residents within the Buena Creek Road corridor. Therefore, without adequate study and documentation, the determination of "Not to be Significant" cannot be made. Samples should be collected at the site during peak and non-peak traffic hours to evaluate the current pollutant loads.

This concludes our comments. We did not have time to comment on many of the sections in the DEIR and would have appreciated additional time to review the project. Our key concerns are as follows:

The project, with large manufactured slopes, large expanses of block walls, along with a straight angular layout, is more indicative of a housing tract type community and does not match the adjacent community character. We therefore believe the proposed project has the potential to have a strong negative impact on nearby rural residents. We ask that homes on the West side of the development be reduced to one story and that pads, homes, and landscape features be given a more random non-uniform look. We believe DEIR did not fully evaluate the impact of Aesthetics of this project and that photo simulations, and/or story poles should have been used to help the public understand the height and massing of the project. The two cross sections provided were crude at best and didn't show adjacent homes. The public is therefore unable to adequately see how this project, one finished, would impact

B22. The BTR focused on direct and indirect physical impacts to existing sensitive biological resources. The EIR is the document decision makers review with regard to plans, impact conclusions and potential mitigation required prior to approval/denial of a project. The EIR discusses the proposed Pre-Approved Mitigation Area (PAMA; refer to page 2.2 17). The text cited by the commentor is in a discussion of jurisdictional setting, not impacts. It provides context for the reader regarding potential activities undertaken by the City of San Marcos. The discussion does not require additional detail, because it does not relate to actions undertaken by the Applicant or County on this property. This Project would not mitigate for any potential impacts resulting from changes undertaken by others in another jurisdiction. The Applicant's responsibility for mitigation is tied to actions undertaken on the Sugarbush property only.

Within the EIR, a total of 21 projects located under the jurisdiction of the City of San Marcos are identified and known biological impacts specified on Table 2.2-5, Cumulative Biological Resources Impacts. The effects of these projects relative to the Natural Communities Conservation Program, draft North County MSCP Subregional Plan, and HLP are addressed on pages 2.2-17 through 2.1-19 of the EIR. No additional analysis is necessary.

B23. The air quality technical specialist for the Project analyzed potential carbon monoxide (CO) "hot spots" at Buena Creek Road/Monte Vista Drive because this intersection would degrade to level of service (LOS) E with the addition of Project-related traffic. CO concentrations also were projected at this intersection for the Existing plus Cumulative plus Project traffic. CO concentrations under this condition at Buena Creek Road/Monte Vista Drive would be substantially below the national and state ambient air quality standards, as shown in Table 3.1.1-1 of the EIR, and impacts would be less than significant.

B24. Please refer to Responses to Comments B2, B3, B10, B17 and B21. Issues concerning project design will be before the decision makers during Project deliberations.

B25. The cross-sections provided in the Draft EIR (Figures 2.1-8 and 2.1-9A and B) bisect the Project property north-south and east-west. The primary purpose of the cross-sections was to provide the reader with an understanding of the Proposed Project's grading relative to the existing landform on site. In response to the comment, however, additional cross sections have been prepared and are attached to this response.

These cross sections depict three east-west sections through lots 3, 17, 27 and 39; E, 14, 30 and 35; and 7, 12, 32 and 33. As requested, the relative scale and location of abutting off-site structures are indicated, as is the portion of the on-site open space slope to the east. Note that single-story structures are shown on lots 17 and 27 while two-story homes are shown for each of the lots closest to the western property line. Specific development plans are not completed, so--

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with the exception of lots for which a single-story dwelling is required as part of the Project Fire Protection Plan--final home elevations on each of the lots (i.e., one or two stories) may vary from that shown. They are indicative, however, of planned variation in structure height that would occur within the development. Note also that the cross sections do not reflect full potential screening provided by enhanced (in terms of density and maturity) slope planting that is required as Project mitigation. This planting is likely to exceed the five-foot fencing placed at top of slope along the proposed residential lots, but sight interruption is only assumed for the five-foot fence height.

As can be seen from the cross sections, the most conservative (i.e., potentially greatest visual effect) structure type is shown next to abutting off-site viewers. This is because the homes depicted are two story and are placed immediately adjacent to the Applicant-extended 100-foot setback from the property line. Even with these assumptions, the typical lines-of-sight depicted here show that views from some of the eight immediately abutting homes would not encompass the proposed structures on the abutting Sugarbush lots. For one of the depicted cross sections, topography would intervene. For the northern-most typical cross section, a straight line shows that the viewer potentially would have a view to the second story of the Sugarbush structure. Slope planting required of the Project as mitigation, however, would be likely to obscure at least part of the residence as well. If the structure were to be moved easterly on the pad, only a portion of roofline could be visible (which, again, most likely would be obscured by the required slope planting). For the southern-most typical cross section, the sight line shows that the viewer potentially would have a view to a portion of the roof top of the Sugarbush structure. Slope planting required of the Project as mitigation, however, would be likely to obscure at least part of the roof top as well. Also as indicated by the cross sections, the more easterly homes within the Proposed Project also would be shielded from views from the west.

In summary, from the adjacent eight homes, some would not see the immediately abutting Sugarbush structures, and (worst-case) some would be able to see the upper portion of a second story or a portion of roof line.

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nearby homes. We ask that this be fully addressed in the final EIR. In addition, a landscape plan should be provided to demonstrate to the public that the proposed mitigation is sufficient. When and EIR fails to provide such detail the public must assume the worst; the mitigation measures won't work.

The significant extent of walls along the exterior of the community is out of character to a rural environment. These walls, similar to the wall at the corner of Monte Vista and Buena Creek Road become vandalized by graffiti and the expense to constantly paint over the graffiti is costly for the community. Therefore all exposed walls need to be landscaped with a mixture of coverings and scrubs to soften their appearance and help prevent graffiti.

This represents yet another project in our area that requires either a General Plan Amendment or a Major Use Permit. We are concerned that the continued reliance on getting around the existing zoning and by-right use in our community undermines not only the existing General Plan but the in process General Plan update and makes the General Plan undefendable as a legal planning tool. This project by itself does not complete that process, but the cumulative effects of this project, combined with several other recent and proposed projects, bring into question the validity and effectiveness of County's planning process.

Sincerely,


Gil Jennott, Chair

B26. Refer to Response to Comment B7.

B27. Refer to Response to Comment B3.

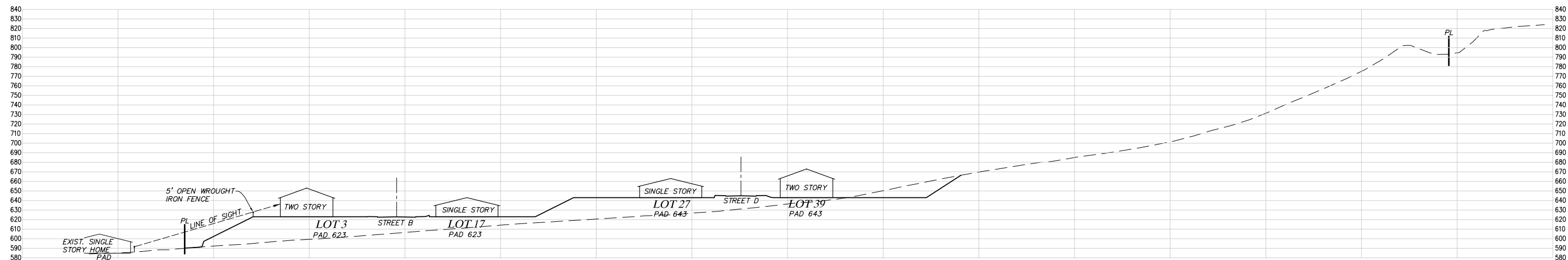
B28. Relative to the Proposed Project, please note that the Project would not increase residential units assumed for the Project site. The General Plan would allow 57 theoretical units on the Project property, and a total of 45 residential units are proposed. Also consistent with the General Plan is the concept of clustering, a tool that addresses the site constraints related to steep slopes and sensitive biological resources. As shown on pages 3.1-42 and 43 of the EIR, the specific criteria required to support clustering are met by this Project. The only reason a General Plan Amendment is required is because the North County Metropolitan Subregional Plan (as opposed to rejecting it) is silent on the issue of clustering.



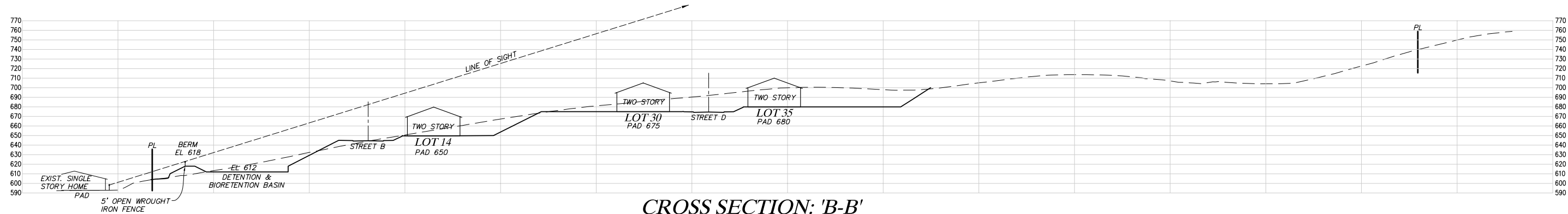
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Cross Section Locations

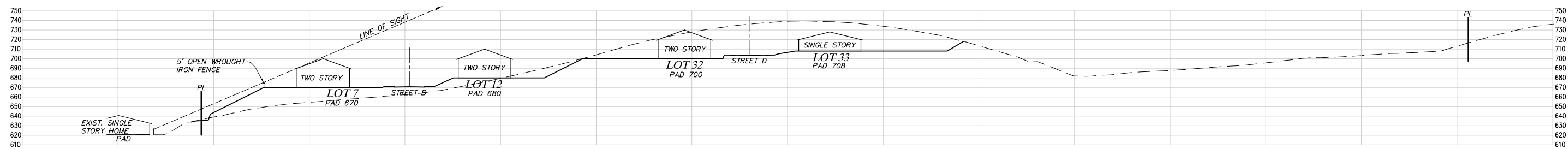
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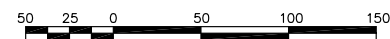
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Typicals to Depict Potential Façade Articulation

ATTACHMENTS TO LETTER B, RESPONSE B19 AND LETTER G, RESPONSE G5



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Typicals to Depict Potential Façade Articulation

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Typicals to Depict Potential Façade Articulation

ATTACHMENTS TO LETTER B, RESPONSE B19 AND LETTER G, RESPONSE G5

CALIFORNIA INDIAN LEGAL SERVICES**Escondido Office**

609 South Escondido Boulevard, Escondido, CA 92025 Phone 760/746-8941 Fax 760/746-1815
www.calindian.org contactCILS@calindian.org

EUREKA
ESCONDIDO

Mark A. Vezzola, Staff Attorney
760/746-8941, Ext. 121
mvezzola@calindian.org

BISHOP
SACRAMENTO

November 17, 2009

Mr. Eric Gibson
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123

Re: Comments on GPA 05-010; SP03-003; R04-008; TM 5295RPL; S04-015; Log
No. 02-08-047; Sugarbush Residential Development Project

Dear Mr. Gibson:

These comments are submitted by California Indian Legal Services on behalf of the San Luis Rey Band of Luiseno Mission Indians ("San Luis Rey Band" or "Tribe"), regarding the above Project. The San Luis Rey Band is a San Diego County Tribe whose traditional territory includes the current cities of Oceanside, Carlsbad, Vista, Escondido and Bonsall, among others. The San Luis Rey Band is concerned about the preservation of cultural, archaeological and historical sites within the area affected by the proposed Project.

The San Luis Rey Band is concerned about the protection of unique and irreplaceable cultural resources and sacred sites which may be damaged or destroyed by the proposed Project. The Band is also concerned about the proper and lawful treatment of Native American human remains and sacred items likely to be uncovered in the course of Project development. The Assessment Plan does not discuss cultural resources, even though it does briefly mention the historical use of the area by Native Americans. As such, the Plan fails to address what, if any impacts the Project will have on cultural resources.

The San Luis Rey Band is not opposed to the Project generally, but is fervently opposed to any plan that may damage or destroy any potentially important cultural or sacred sites and human remains that may be located within the Project boundaries. In addition, based on the Band's ancestral ties to the Project area, it is very likely that there are resources that have not been located in previous surveys or data recovery programs, or that are visible on the surface. The amount of disturbance required to meet the objectives of the plan is not clear, however given that many habitation sites are located near water resources, efforts to rehabilitate habitats may impact cultural resources.

C1. Comments noted. No response is necessary.

C2. The County acknowledges and appreciates this comment and notes the Tribe's concerns. The Environmental Impact Report (EIR) and Appendix E of the EIR (Cultural Resource Survey Report) do not identify any prehistoric archeological sites within the Project area. A review of documentation at SCIC did indicate that PRC Troups Corp had surveyed a portion of the Project area in 1979, but no sites were recorded on the subject property. Additionally, a request to San Luis Rey was sent on October 14, 2005 regarding any information that the Tribe may have had concerning the potential for the presence of Native American cultural resources that may be impacted by this Project. No response was received from San Luis Rey at that time. Archaeologists Delman James and Stephen Briggs, conducted a field survey in March 2003 under the direction of County-approved archaeologist, Carolyn Kyle. They did not identify any cultural resources within the Project area. In March 2009, the Cleveland Trail emergency access road was surveyed and a rock feature identified by a neighbor was tested. No cultural resources were identified and the rock feature was determined to be modern. P.J. Stoneburner of the San Luis Rey Band of Mission Indians was present for the March 2009 survey and testing but no comments from him were provided. Due to previous research and lack of information from tribes, combined with a negative field survey, the County determined that no known cultural resources were present on the property. Due to the potential for undiscovered buried resources that may exist within the Project area, grading monitoring by a County-approved archaeologist in conjunction with a Native American monitor is identified as Mitigation Measure M-CR-1 in the EIR. This will be a condition of Project approval.

C3. The County acknowledges and appreciates this comment and notes the Tribe's concerns. See Response C2 above. Generally, Project sensitive habitats would be placed in biological open space easements to protect them from Project-related impacts. The coast live oak woodlands creation proposed by the Project would be localized and focused (0.9 acre) in extent. It is anticipated that the Native American monitor would be present at initial ground disturbance associated with brushing activities necessary for habitat creation.

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Comment Letter to Eric Gibson
 Re: Sugarbush Residential Development Project
 November 17, 2009
 Page 2

C4 Because the Project is located in an area where resources may be disturbed, the San Luis Rey Band requests mitigation measures be added and that they be conditions of approval for this Project, to ensure that this Project is handled in a manner consistent with the requirements of the law and which respects the Band's religious and cultural beliefs and practices. The following measures must be included in both the mitigation plans and the conditions for Project approval:

C5 The San Luis Rey Band requests that the Developer be required to sign a pre-excavation agreement with the Band prior to the start of the Project. This agreement will contain provisions to address the proper treatment of any cultural resources or Native American human remains inadvertently uncovered during the course of the Project. Should any Native American human remains be uncovered during the development, the San Luis Rey Band will likely be designated the "Most Likely Descendant" (MLD) by the Native American Heritage Commission, as this is their traditional territory, as recognized by the Commission. Thus the interest of the San Luis Rey Band in the Project area and their desire to protect any cultural resources or Native American human remains that are uncovered has been confirmed by the Commission.

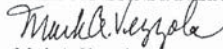
C6 The pre-excavation agreement should be entered into prior to any ground-disturbing activities. The agreement will outline, to the satisfaction of the San Luis Rey Band, the roles and powers of the Native American monitors and the archaeologist, in addition to requiring compensation of the monitors by the Developer. Such an agreement is necessary to guarantee the proper treatment of cultural resources or Native American human remains displaced during the Project development.

C7 To ensure the proper treatment of any cultural resources or Native American human remains that are uncovered during the course the development, the San Luis Rey Band formally requests that the Developer agree to return these items to the Tribe if discovered. In contrast to Section 2.3.5 of Subchapter 2.3, any plans to curate any such items would disregard the respect due to these cultural resources. This Project is located within the traditional and aboriginal territory of the Band. The San Luis Rey Band considers all cultural items found in this area to belong to their ancestors rather than to the Developer.

We look forward to working with the Developer to ensure compliance with the CEQA and thank you for your continuing assistance in protecting our invaluable Luiseno cultural resources.

Sincerely,

CALIFORNIA INDIAN LEGAL SERVICES



Mark A. Vezzola
 Attorneys for the San Luis Rey Band

cc: Melvin Vernon, Tribal Captain
 Carmen Mojado, Secretary of Government Relations

C4. The County acknowledges and appreciates this comment and notes the Tribe's concerns. This comment will be before the decision makers during Project deliberations.

C5. The County acknowledges and appreciates this comment and notes the Tribe's concerns, but does not agree that a pre-excavation agreement is required between the Developer and the Tribe for the current Project. The Project area does not contain known cultural resources (see Response C2).

C6. Please refer to Response to Comment C5.

C7. The County acknowledges and appreciates this comment. Under the CEQA, the County has a legal obligation to curate and preserve recovered artifacts, except for human remains and associated grave goods, for their informational and educational potential. Curation must be at a San Diego facility that meets federal standards per 36 CFR Part 79, whereby the artifacts would be professionally curated and made available to other archaeologists/researchers for further study. If human remains or associated grave goods are identified, the MLD may make recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative may rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance. In most cases when human remains are found, they, along with any associated grave goods that may be identified, are not curated but reburied on site or returned to the MLD for reburial.

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Oct. 15, 2009

Robert Hingtgen
DPLU
5201 Ruffin Rd, Suite B
San Diego, CA 92123

RE: Sugarbush Project ((PGA 05-101, TM 5295))

Dear Mr. Hingtgen:

The Endangered Habitats League supports the general design of the project which via a Specific Plan consolidates development and conserves large blocks of open space. This protects biological resources and reduces fire hazard.

Sincerely,

Dan Silver, Executive Director
Endangered Habitats League
8424 Santa Monica Blvd., Suite A 592
Los Angeles, CA 90069-4267

213-804-2750
dsilveria@me.com
www.ehleague.org

D1. Comment noted. The County acknowledges this letter of support for the project design as it relates to open space.

D1 [



San Diego County Archaeological Society, Inc.
Environmental Review Committee

23 November 2009

To: Mr. Robert Hingtgen
Department of Planning and Land Use
County of San Diego
5201 Ruffin Road, Suite B
San Diego, California 92123-1666

Subject: Draft Environmental Impact Report
Sugarbush Residential Development Project
GPA 05-010, SP03-003, R04-008, TM 5295RPL⁷, S04-015, Log No. 02-08-047


Dear Mr. Hingtgen:

I have reviewed the cultural resources aspects of the subject DEIR on behalf of this committee of the San Diego County Archaeological Society.

Based on the information contained in the DEIR and its Appendix E, we agree with the impact analysis and the monitoring program prescribed as mitigation.

Thank you for including SDCAS in the County's environmental review process for this project.

Sincerely,


James W. Royle, Jr., Chairperson
Environmental Review Committee

cc: Kyle Consulting
SDCAS President
File

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P.O. Box 81106 • San Diego, CA 92138-1106 • (858) 538-0935

E1. Comment noted. The comment does not assert any deficiencies in the EIR analysis related to cultural resources.

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November 24, 2009

Allen F. & Karen Binns
2637 Deer Springs Place
San Marcos, CA 92069-9761

Department of Planning and Land Use
5201 Ruffin Road
Suite B
San Diego, CA 92123-1666

Re: Sugarbush Residential Development Project

Dear Mr. Hingtgen,

Thank you for allowing us the opportunity to comment on this project.

At first glance at the DEIR you wonder what is so bad with ½ acre lots and 45 homes on 115 acres. I then decided I had better go down and visit the site. That enlightened me to what and where this project is all about.

Here are some of my findings from my visit on site and my reading of the DEIR documents:

- F1 ☐ This project is in the middle of a large Coastal Sage Scrub area. There is a creek that flows through the project. It is a high value habitat area and is also home to a pair of California Gnatcatchers.
- F2 ☐ When the alternatives to the project were drafted, a great disadvantage was done by placing the homes right beside the creek. The pollution and runoff from the lots can harm the creek. This may have been a deliberate attempt by the Developer to make his project more acceptable than the alternative.
- F3 ☐ The 2 roads will bisect the preserved land.
- F4 ☐ Will this preserved space be “preserved in perpetuity”, or only until this or another developer wishes to develop the open space? This open space needs to be “preserved in perpetuity”.
- F5 ☐ It is my impression that Cleveland Trail is not able to be improved upon to your standards of 24 feet paved and 28 feet graded.
- F6 ☐ Do you have legal access to Cleveland Trail?.
- F7 ☐ There are 23.1 acres of Coastal Sage Scrub. How will this be mitigated?

- F1. The County agrees that the Project site is located within a larger coastal sage scrub area, and that coastal California gnatcatchers were observed on site. As a point of clarification, the Diegan coastal sage scrub on site is rated as having intermediate potential for long term conservation pursuant to Natural Communities Conservation Planning guidelines (see page 2.2-5 of the EIR). Similarly, it is believed that the “creek” referenced in the comment refers to an ephemeral drainage that does not support wetland vegetation and is not regulated under the County Resource Protection Ordinance. (It is a non-wetland Waters of the U.S. regulated by the U.S. Army Corps of Engineers and a California Department of Fish and Game jurisdictional streambed. The functions and values related to storm flow conveyance would be protected by the Project via installation of pipe to convey flows under the proposed access road [see page 2.2-10 of the EIR].)
- F2. The County respectfully disagrees. Please refer to Response to Comment F1 regarding the value of the drainage. Comparing Figure 2.2-2 (Jurisdictional Delineation) with Figure 4-1 (No Project/Existing Zoning Alternative), it can be seen that the jurisdictional feature is outside the grading footprint for the closest lots aligned along future Sugarbush Drive (4, 5 and 6). The pads would be upslope of the drainage, but strict compliance with the County Grading Ordinance would render any potential adverse effects to less than significant levels during construction. Once developed, the lots would drain to the detention/bioretention basin located in the western extent of the Project near Cleveland Trail during residential use. As noted on page 1-8 of the EIR: “Detention/bioretention basins would filter stormwater/site runoff anticipated to reach the Buena Creek drainage. The basins are designed to have high pollutant removal capacity for coarse sediment, trash and pollutants such as nutrients, heavy metals and pesticides...” The Project also would incorporate additional Low Impact Development (LID) techniques and source control and treatment control BMPs to reduce runoff and pollutants from the development area.
- F3. The reference to the “two proposed roads” is not understood. The County agrees that the proposed extension of Sugarbush Drive would cross proposed open space. The reference may be to two easements that must be retained for potential future access to otherwise landlocked parcels. These rights-of-way would be preserved under any build or no project alternative, but the Sugarbush Project would not build these roads (and no road construction is currently proposed by others). It should be noted that existing easements on the property would be coalesced into common rights-of-way and/or abandoned/vacated if the Project is approved.
- F4. The County is in agreement with this comment. The proposed open space area would be preserved in perpetuity (please refer to page 1-7 of the EIR).
- F5. Project-related improvements to Cleveland Trail roadbed would occur within the existing 30-foot-wide right-of-way. Existing hardscape generally would be repaved to 24 feet in width and portions currently consisting of packed dirt also

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would be paved (see page 1-5 of the EIR). Cleveland Trail would remain in its existing condition of 20 feet of paved width where it crosses Buena Creek, pursuant to a design modification that was approved by the Department of Public Works with input from Vista Fire Protection District. These improvements have been approved both by the County Department of Public Works and the Fire Marshall.

F6. The Project Applicant has provided adequate legal access documentation for Cleveland Trail.

F7. The Project would result in impacts to 23.7 acres of Diegan coastal sage scrub. These impacts would be mitigated through on-site preservation at a 2:1 ratio (see page 2.2-20 of the EIR). Although not required as mitigation, the Project Applicant also would preserve all remaining (and not impacted) acres of Diegan coastal sage scrub within on site open space.

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- F8 ☐ How will the pair of California Gnatcatchers be mitigated?
- F9 ☐ In Appendix G, Noise Assessment: Figure A-1 re: "Existing dip section to remain". Dip sections are not allowed and are illegal. Fire departments do not allow them. I do not believe that they are even acceptable by County Road Standards. This map needs to be corrected.
- F10 ☐ In the Pacific Noise Control document dated October 7, 2004 who will see that the "allowable construction activities would be up to 4 hours per day when construction activities are 90 feet or closer to the western property line...."
Who will police this and see that this mitigation measure is followed? Will this be forced upon the current residents to police?
- F11 ☐ The DEIR stated construction activity on Saturdays from 7 am – 7 pm. Is the Sugarbush project proposing to have a 12 hour work day on Saturdays?
- F12 ☐ On page 2.5-8 the DEIR states that "the Freidas Hill, Kowano Subdivision and Tai Estates will start construction before the Sugarbush Project because they are farther along in the approval process". Nobody knows for sure what will happen and it is presumptuous for the DEIR to make such a statement as they have no control over these other 3 projects.
- F13 ☐ In Chapter 3.0 Environmental Effects Found Not to Be Significant on page 3.1-88 Merriam Mountains Project numbers are incorrect. It should state 2700 units not 2391. That is a very old number of units. Please correct all references to this incorrect number and revise any studies such as traffic etc. that the incorrect number reflects.
- F14 ☐ There is no mention of silica dust from the probable blasting activities on this site. Why wasn't a silica dust study conducted? There are sensitive receptors in very close proximity to this project.
- These are just some of my impressions from my site visit and my brief reading of some of the DEIR documents.
- F15 ☐ I would like to state that the waffle effect or grid effect of the homes should be changed and the area of the homes should be moved further away from Lone Oak Lane. I believe that I read that in some cases the homes in the Sugarbush Development will be 10 feet from the current homes on Lone Oak Lane.
- Thank you for allowing us this opportunity to comment on this project.

Sincerely,



Allen F. Binns
Karen Binns

- F8. Implementation of Mitigation Measure M-BI-5 on page 2.2-22 of the EIR would mitigate impacts related to the loss of coastal California gnatcatcher habitat (via preservation of primary habitat, the on-site Diegan coastal sage scrub). Mitigation Measure M-BI-8 also states that no grading or clearing would occur during gnatcatcher breeding season unless no gnatcatchers are found during pre-construction surveys performed by a qualified biologist, and Mitigation Measure M-BI-10 prohibits construction activities near an active gnatcatcher nest if noise levels at the nest would exceed 60 dB(A) Leq.
- F9. The Proposed Project improvements along Cleveland Trail (including retention of the existing dip section) received approval from the Vista Fire Protection District and County Department of Public Works.
- F10. Mitigation Measure M-N-2c requires noise monitoring, and states, "Noise monitoring shall be conducted by an approved County noise consultant during the initial construction equipment operations to ensure that noise levels comply with County Noise Ordinance Section 36.409." There will be no need to rely upon neighboring residents for enforcement, although phone numbers would be provided to such residents as a matter of course.
- F11. Section 36.408 of the County Noise Ordinance states that construction is permitted between the hours of 7 a.m. and 7 p.m., Monday through Saturday, excluding holidays. The EIR states that construction "would be restricted to hours permitted" under the Ordinance. In other words, the period for active construction activities would not exceed those allowed. Specific activities on specific days, however, are currently unknown. Extent and type of activities would be expected to vary at different stages of the construction phase based on the location of the site being worked on.
- F12. The commentor correctly quotes the EIR, but the finding of less than significant impact was not based on the likelihood of construction periods. Rather, the lack of cumulative effect primarily was based on the location of "each of these cumulative projects... a minimum of 400 feet from construction activities proposed on the Sugarbush Project site." Secondly, the very short-term nature of the Cleveland Trail improvements made it unlikely that they would occur simultaneously with construction of the three single family residences on the Leese property. Regardless, it was noted that if such an overlap were to occur, the potential incremental noise increase would be minimal and not exceed the 75 decibel threshold. Compliance with the ordinance is mandatory. Please refer to page 2.5-9 of the EIR.
- F13. The Merriam Mountains development project was denied by the Board of Supervisors on March 24, 2010.
- F14. Construction activities that have been identified as sources of silica dust by the U.S. Department of Labor, Occupational Safety and Health Administration indicate that

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the most severe exposures to crystalline silica result from sandblasting to remove paint and rust from stone buildings, metal bridges, tanks and other surfaces. Other activities that may produce crystalline silica dust include jack hammering, rock/well drilling, concrete mixing, concrete drilling, and brick and concrete block cutting and sawing. Tunneling operations; repair or replacement of linings of rotary kilns and cupola furnaces; and setting, laying and repair of railroad track are also potential sources of crystalline silica exposure.

Potential Project construction activities that would result in silica dust include rock breaking and blasting. For the Proposed Project, these activities would be intermittent and short-term. Where blasting would be required closest to sensitive receptors, Project noise control design considerations anticipate it would be completed using chemical breakers, which would not produce silica dust.

There are no adopted CEQA significance thresholds for environmental exposure of nearby receptors to airborne crystalline silica generated by construction activities. In general, construction is relatively short-term and does not approach the durations associated with health hazards from silica dust exposure. Construction activities also do not generate silica dust at high enough concentrations to cause health hazards on adjacent properties, both due to required dust management and airborne dispersal patterns. In the absence of empirical evidence demonstrating silica hazards on adjacent properties, no thresholds have been established for construction projects.

The only activities identified by OSHA as a source of crystalline silica that would occur at the Sugarbush Project site would be the intermittent rock drilling and rock crushing which would occur over a period of approximately six months. While construction activities would be occurring at the Sugarbush Project site over a two-to-three year period, activities would not result in chronic exposure (i.e., would not be in a single location for eight years or longer).

In conclusion, health risks to residences in the vicinity of the Sugarbush Project related to silica dust would be less than significant because: (1) residents would rarely be exposed to levels above the REL, if at all, and (2) exposure of levels above the REL for short periods of time would not constitute chronic exposure (eight years or more).

F15.Regarding residential layout, as noted on page 3.1-49 of the EIR, “although lot pads shown on the Tentative Map and Site Plan appear uniform, that does not necessarily mean that housing would reflect this uniform layout. The reasons for this are that the buildable portion (area and shape) of each lot varies based on the setbacks and future homes may be located anywhere inside that buildable portion of the lot.” The project is proposing varying lot sizes with varying lot widths and varying front yard setbacks. This will allow garages to be turned away from the street to create a more interesting and appealing streetscape.

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There is no instance in which a proposed home would be within 10 feet of an existing home. (There is an instance in which an off-site home may be within 10 feet of the Project grading footprint.) The minimum residential set back from the western property boundary is 100 feet (please see page 1-5 of the EIR). This would be added to the distance the existing Lone Oak residence is from the property line.

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW
EMERALD LAKE CORPORATE CENTRE
1525 PARKWAY AVENUE, SUITE 130
CARLSBAD, CALIFORNIA 92008
TELEPHONE 760.431.9501
FACSIMILE 760.431.9512

OF COUNSEL
MICHAEL SCOTT GATZKE
ANTHONY T. DITTY

FACSIMILE TRANSMITTAL SHEET

DATE: November 30, 2009

TO: Robert Hingtgen, Planner, County of San Diego DPLU
(858) 694-3373

FROM: Rainee Fend, Legal Assistant to David P Hubbard

REGARDING: Sugarbush Residential Development Project - GPA 05-010; SP03-003;
R04-008; TM 5295RPL; S04-015; Log No. 02-08-047

TOTAL PAGES: 37

MESSAGE:

Please see the attached comment letter. Please contact Mr. Hubbard with any questions.

Sincerely,

Rainee Fend

Legal Assistant to David P. Hubbard

IF ALL PAGES ARE NOT RECEIVED, OR IF THERE ARE ANY OTHER TRANSMISSION DIFFICULTIES, PLEASE CALL (760) 431-9501 AND ASK FOR Rainee Fend, EXT. 124.

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GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW

EMERALD LAKE CORPORATE CENTRE

1525 FARADAY AVENUE, SUITE 150

CARLEBAD, CALIFORNIA 92008

TELEPHONE 760.431.0301

FACSIMILE 760.431.9512

OF COUNSEL

MICHAEL SCOTT GATZKE

ANTHONY T. DITTY

November 30, 2009

Via Email and Fax

Robert Hingtgen, Planner III
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

Re: *Sugarbush Residential Development (GPA 05-010; SP03-003; R04-008;
TM 5295RRPL; Log No. 02-08-047) – Comments on Draft Environmental
Impact Report (SCH No. 2005121098)*

Dear Mr. Hingtgen:

I represent Lindsay Townley, Dave Root, Susan Arneson, and other residents who live on Lone Oak Lane, Lone Oak Road, and Sugarbush Drive. On behalf of these residents, I have reviewed the Draft Environmental Impact Report ("DEIR") for the proposed Sugarbush Residential Development project (the "project"). Below, I provide my comments on the DEIR. These identify defects in the document that, if not corrected, render it inadequate under the California Environmental Quality Act (CEQA).¹

Before describing those defects, however, I should first explain my clients' basic objection to the project. Like all land within the County of San Diego's jurisdiction, the project site is currently subject to development limitations imposed by its General Plan land use designation and by its zoning overlay. Although the existing land use designation and zoning provide significant development opportunity at the project site – including the right to build more than 20 housing units – the owner/applicant is not satisfied with the profit potential these land use parameters would afford. Therefore, he wants to change the land use designation and/or zoning that applies to the subject property.

This fact, more than any other, is what rankles my clients. They do not begrudge the owner/applicant economic use of his property, provided it is consistent with the existing General

¹ Cal.Pub.Res. Code §§ 21000, *et seq.*

GATZKE DILLON & BALLANCE LLP

Robert Hingtgen
November 30, 2009
Page 2 of 6

Plan and zoning designations and otherwise conforms to County development guidelines and the demands of other regulatory agencies. They object, however, to an absentee landowner who purchases property knowing full-well the limits on its development potential, but then seeks to relax those limits in the name of maximizing profit. For the existing residents – *i.e.*, the people most affected by the project – the limits imposed by the General Plan and zoning code are their only protection against impacts emanating from neighboring properties. When those limits are weakened or become porous, that protection is gone. With it, goes the public's trust in the County's land use system and the people who administer that system.

It would be a smaller (but not insignificant) matter if the applicant's request for a General Plan amendment and/or zone change was rare or anomalous – *i.e.*, something the County considers only when dictated by unusual or extenuating circumstances, and approves only after much deliberation and hand-wringing. But it's not. Unfortunately, the County constantly processes plan amendments and zone changes, undermining the integrity of the land planning regime that the residents of the County rely on. The cumulative effect of these land planning and zoning changes is dramatic and damaging, making deep impacts on the quality of life within the County. This project and the Merriam Mountain project, both of which are located in the Twin Oaks Valley area of the County, are symptomatic of this syndrome. Neither project conforms to its existing planning and zoning designations; yet the County is willing to consider changing those designations to permit more intense development, all to the detriment of the existing environment. At some point, the County must take a stand and recognize that granting requests for General Plan amendments and zone changes is causing development to outstrip the carrying capacity of the County's ecology and infrastructure. This practice needs to stop here and it needs to stop now.

Specific Comments on the Draft EIR

1. Aesthetics/Visual Quality. The DEIR's visual impacts analysis is inadequate. First, it fails to describe accurately the existing aesthetic environment on and near the project site. Rather than illustrate the near-pristine beauty of the majority of the property (and surrounding lands), the DEIR focuses on the two or three blighted areas of the site – implying that they are representative of the entire property, which is false. The DEIR also fails to mention that the one person capable of preventing or reversing the blight illustrated in the document is the owner/applicant himself, who has seen fit to do neither. Second, the DEIR provides no meaningful depiction of how and to what extent the existing visual environment will be altered by the project. The analysis is markedly low-tech. It includes no photo-simulations showing what the proposed development will look like once imposed on the existing landscape. Such photo-simulations are easy to produce and have been the industry standard for many years. Without them, the DEIR cannot illustrate to the public or the County decision-makers the actual visual impacts of the project. Third, the DEIR fails to account for project impacts on existing views from private residences. Fourth, the DEIR should, but does not, provide architectural

G1. Planning agencies must respond to changing conditions, and as a result, planning documents have projected life spans and legal tools are in place to amend them. County use of General Plan amendments as a planning tool is beyond the scope of this Project. The issue of consistency with the General Plan will be before the decision makers during Project deliberations.

The Sugarbush Project is not similar to the Merriam Mountains project in several respects. The Merriam Mountains project proposed to increase residential density as compared to the existing General Plan. The Sugarbush Project does not propose an increase in residential units as anticipated by the General Plan for the Project site. The General Plan would allow 57 units on the Project property and a total of 45 residential units are proposed. Also consistent with the General Plan is the concept of clustering, a tool that addresses the site constraints related to steep slopes and sensitive biological resources. As shown on pages 3.1-42 and 43 of the EIR, the specific criteria required to support clustering are met by this Project. The only reason a General Plan Amendment is required is because the North County Metropolitan Subregional Plan (as opposed to rejecting it) is silent on the issue of clustering. Zoning for the site, although proposed to be different from existing zoning, would be the same as that of the Lone Oak neighborhood immediately west of the Project. The Project actions would actually result in a decrease in density on the site from the current density anticipated by the General Plan.

G2. The County respectfully disagrees that the EIR visual impacts analysis does not accurately describe the existing aesthetic environment. The reader is referred to specific information regarding the environmental setting in Section 1.4 of Chapter 1.0 and page 2.1-1 of the EIR. Pages 1-12 and 1-13 contain specific information regarding the overall setting and abutting uses. Pages 2.1-1 and 2.1-2 summarize the mix of area uses and lot sizes. Pages 2.1-2 and 2.1-3 contain summary information regarding the site, including the fact that the majority of the site contains native vegetation. The introductory text is supported by a series of photographs that illustrate existing views to the Project site from the west, north and south (private property with no public access road is located to the east), as well as on-site photographs looking north, south, west and east. Specifics as to what is seen in each of these photographs, both on and off site, are also provided in text. The County also disagrees that what is depicted generally would be characterized as "blight." Rather, and consistent with the description, it shows an area with a large block of native habitat that also shows the effects of some on-site agricultural sprawl from an abutting property as well as evidence of neighbor use of the property for recreational purposes (e.g., small trails on the site).

G3. The County agrees that the visual analysis for this Project is "low tech." This is considered appropriate for a Project of this scale, nature and general visibility. It is acknowledged that significant changes to views from the west would be related to the creation of manufactured slopes that would replace existing views

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of the undeveloped site. The Project would be required to to landscape with more mature and denser slope planting in order to minimize short-term effects related to slope modification/graded soils (see mitigation measure M-AE-1 in Chapter 2.1 of the EIR). Figure 2.1-10 of the EIR depicts the Project conceptual landscape plan. Ultimately, however, the long-term change to private views does not rise to the level of CEQA significance as the type of use (residential) is the same as that proposed in the General Plan, no identified adopted view corridor is being affected, and the number of immediately abutting viewers totals seven homes to the west, with approximately five homes a quarter mile to the south (see Chapter 2.1.2.2 (Neighborhood Viewers – Long-term Visual Effects)).

- G4. The commentator is incorrect. Private views and the potential changes to them are addressed on pages 2.1-6 and 2.1-10 through 2.1-19, with the text on pages 2.1-13 through 2.1-19 specifically pertaining to the Lone Oak neighborhood viewers to the west.

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G5 (cont.) renderings of the proposed homes and common areas. As a result, there is no way to discern whether the houses will blend aesthetically with the surrounding neighborhoods.

G6 2. **Community Character.** Among the project's most severe impacts is its effect on the character of the Lone Oak/Sugarbush community. The DEIR, however, fails to take this effect seriously, giving it virtually no analysis. The basic fact is that the owner/applicant intends to place a highly-clustered residential development, complete with high retaining walls and a "waffle iron" lot configuration, into a semi-rural community dominated by homes on large, irregularly-shaped lots. The two housing concepts could not be more different. Moreover, they do not fit together well. Undaunted, however, County staff and the applicant point out that there are a couple of recent, nearby developments that have the same clustered, waffle-grid design being advanced for this project. This is true – which proves my clients' point. Over the last 10-15 years, the County has approved such projects over the objections of the existing residents, most of whom complained, in one form or another, that the semi-rural character of the Sugarbush area would eventually morph into something akin to the suburban aesthetic one sees in Shadowridge (Vista) or Rancho Bernardo – an aesthetic that most people who live in Sugarbush rejected in favor of something more pastoral. Now, however, the applicant is using these earlier, anomalous developments as *examples* of the community's character, and as *precedents* for his own "cluster and grid" design. This is precisely the "snowball effect" that residents have feared for a long time. Moreover, the changes wrought by suburban (as opposed to semi-rural) developments, although incremental, can be devastating and permanent over time. Unfortunately, the DEIR makes no attempt to evaluate this cumulative impact.

G7 3. **Biology.** The DEIR includes no information regarding project impacts on terrestrial species (reptiles, amphibians, mammals) or birds other than the gnatcatcher. For this reason, the biology analysis is inadequate. It is also clear that the pair of gnatcatchers observed on-site will be (a) directly taken as a result of this project or (b) permanently displaced by it. In either case, the impact is significant, contrary to the conclusion drawn in the DEIR. With respect to habitat loss, the DEIR does not provide a clear statement as to the actual net loss of coastal sage scrub or coast live oak woodland resulting from the project. Instead, the DEIR tries to divert attention away from the project's "net loss" impact on habitat and redirect that attention toward the applicant's commitment to "preserve" coastal sage and live oak woodland on-site. Indeed, according to the DEIR, such preservation – which is really nothing more than the developer's agreement not to destroy any more habitat than he needs for his subdivision – operates to sufficiently mitigate the habitat losses caused by the project. Preservation, however, is not full mitigation, as it still results in net losses. Were this the only project to cause such habitat impacts, the net losses might be of little concern. But this is not the case. The County routinely allows net losses of sensitive habitat to occur, and the cumulative impact of this policy is devastating. Unfortunately, however, the DEIR fails to assess it. We also note that the DEIR provides little analysis of project impacts on, or mitigation for, the ephemeral stream that runs along the route of the proposed Sugarbush Drive extension. In addition, the DEIR grossly

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G5. Specifics of architectural design were not evaluated as relevant to community character in the EIR for two reasons: (1) variation rather than conformity usually is associated with both rural residential and estate housing, both of which are in the vicinity of the Project, and (2) most viewers of the residences would be at distances from which architectural detailing would not be perceivable. Rather, the intent to provide a number of residential styles, plus an expanded color palette supported this Applicant's contention that the proposed homes would not appear overly homogenous. Regardless, several photographs of structures built by the Applicant are attached to these responses. The locations of these projects are in Encinitas, California. While taken from projects with larger homes and a different structure/lot size ratio than is proposed for the Sugarbush Project, the structure articulation (varied roof pitches, wall setback lines and façade finishes) would be similar to that shown. As part of this response, the additional information is incorporated into the EIR. No modifications to the body of the EIR text are necessary.

G6. The County agrees that once a use is present it becomes part of the existing conditions, and also becomes relevant in analyses of conformity for additional proposed projects. The County disagrees, however, with the contention that the character of the Proposed Project is severely out of character with the community.

As addressed in the EIR, community character is reflective of the community, and not small specific areas within it. Visually, the community would be defined by what is located within the viewshed for the Project. Community character is much more than lot configuration and size. A community is defined by the sequences of the spaces created by the dwellings and the open space adjacent to them. The large open space and the compact subdivision design proposed by the Project promote a sense of place and a sense of character.

The project is proposing varying lot sizes with varying lot widths and varying front yard setbacks. This will allow garages to be turned away from the street to create a more interesting and appealing streetscape. In addition, planned structures would not cover the entire buildable portions of the lots. Proposed lots range from 0.50 acre to 1.73 acres, with an average resulting lot size of 0.78 acre. Regarding driveways and hardscape treatments, the project utilizes varying road widths, and driveways would vary as a result of dwelling setback and lot orientation, as well as hardscape material (e.g., concrete). Streetscape elements incorporate decomposed granite pathways as opposed to concrete sidewalks and split rail fencing, both of which reference a rural rather than urban setting. New developments cannot be developed the same way as neighborhoods that were developed in previous decades due to changes in codes and standards.

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Regarding potential cumulative effects, the County disagrees that this issue is not addressed in the EIR. It is addressed on page 2.1-22 of the EIR.

G7. The County disagrees that the only information regarding impacts was to the California gnatcatcher. The EIR addressed potential for impacts to relevant special status species, including coastal California gnatcatcher and raptors, as well as migratory birds. Significant impacts were identified to foraging area for raptors (including white-tailed kite, red-shouldered hawk and turkey vulture) as well as nesting migratory birds on page 2.2-14. Other sensitive animal species were not observed on site during biological resources surveys; however, their potential to occur on site is addressed in Table 2.2-3 of the EIR; including butterflies, amphibians, reptiles, other birds and mammals. The EIR was not required to analyze non-sensitive species, although the EIR also discusses the potential for Project-related road kill in Section 2.2.2.3, Wildlife Corridors.

G8. As noted on page 2.2-13 of the EIR: “The locations where the [coastal California gnatcatchers] were sighted would not be directly impacted by the Proposed Project. Because the gnatcatcher is a federally listed threatened species, however, impacts to individuals or habitat would constitute a significant impact.” Indirect impacts associated with noise also were determined to be significant. Mitigation Measures M-BI-5, 8 and 10 on pages 2.2-22 and 2.2-23 of the EIR identified appropriate mitigation to lower identified significant impacts to less than significant levels. Implementation of the measures would mitigate impacts related to loss of habitat (via preservation of on-site Diegan coastal sage scrub), and restricted construction activities in proximity to gnatcatchers.

G9. The commentor should note that the “no net loss rule” is required only for jurisdictional wetlands. Nonetheless, mitigation for loss of coast live oaks would include both creation and preservation on site (Mitigation Measure M-BI-1a on page 2.2-20 of the EIR), actually resulting in a gain (0.3 acre) of this habitat.

With regard to Diegan coastal sage scrub, Findings in support of issuance of a Habitat Loss Permit (HLP) under Section 4(d) of the federal ESA would be required for the Project; however, an evaluation of the Project concluded that it would be infeasible to construct the Proposed Project without directly or indirectly impacting this habitat. For this reason, the HLP Ordinance would apply to the Proposed Project, and a HLP would be required. The Project would not preclude or prevent preparation of the subregional Natural Community Conservation Plan (NCCP; in this case, the North County MSCP) nor would it reduce the likelihood of survival and recovery of a species in the wild. In accordance with the NCCP Act, each jurisdiction is allowed a five-percent reduction in total coastal sage scrub. According to Finding 1.a in the HLP, the habitat loss does not exceed the five percent guideline. Project-related impacts to Diegan coastal sage scrub would be mitigated at a 2:1 ratio via on-site preservation. The mitigation ratio for the impact to this habitat was developed based on NCCP Guidelines, and the Wildlife Agencies have reviewed and approved this mitigation ratio. This standard ratio has been applied to projects within the County since DPLU developed its

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first Biological Report Guidelines in the mid 1990s (adopted by the Board of Supervisors). The ratio is considered effective because these reviewing agencies have reached consensus that retention at these ratios will result in sustainable levels of this habitat. In addition, this applied mitigation ratio is greater than the recommended 1.5:1 ratio for this habitat within the Draft North County MSCP Subarea Plan. Although not required as mitigation, an additional 20.2 acres of Diegan coastal sage scrub would be retained on site within dedicated open space as part of Project design. The Project would fully mitigate for impacts to Diegan coastal sage scrub onsite, which was requested by the Wildlife Agencies during earlier project deliberations.

G10. Although beyond the scope of the Sugarbush EIR, the County disagrees that the cumulative effect of habitat loss has not been addressed. As stated on page 2.2-19 of the EIR:

Regionally, including the lands surrounding the biological cumulative study area, substantial amounts of sensitive habitat have been lost to urbanization. This loss of habitat has affected associated plant and animal species, leading, for example, to the federal listing of the coastal California gnatcatcher as threatened. Concern regarding the loss of habitat and species has led to the development of plans and regulations (e.g., MSCP, MHCP, HLP Ordinance) to minimize the extent of future loss. For example, the HLP Ordinance limits cumulative loss of coastal sage scrub from the date of its adoption to five percent of what remained at that time. These regional plans have been developed specifically to address the cumulative effect related to past and planned development in the region.

G11. The on-site ephemeral stream is identified as an ephemeral drainage that does not support wetland vegetation and is not regulated under the County Resource Protection Ordinance. (It is a non-wetland Waters of the U.S. regulated by the U.S. Army Corps of Engineers and a California Department of Fish and Game jurisdictional streambed. The limited physical disturbance of the on-site non-wetland water by the project is identified as a significant impact in the EIR. The functions and values related to storm flow conveyance would be protected by the Project via installation of pipe to convey flows under the proposed access road [see page 2.2-10 of the EIR].) Nonetheless, mitigation also is provided to reduce impacts to below a significant level (Mitigation Measure M-BI-2 on pages 2.2-20 and 2.2-21 of the EIR).

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underestimates the project's potential to bring invasive species into the project site and surrounding riparian areas. The DEIR also overestimates the ability of the proposed mitigation measures to stop the introduction and proliferation of invasive species.

4. **Fire Hazards.** Although the project site is located within an urban-wildlands interface – that seam where fires tend to do the most damage – the DEIR dismisses project impacts on fire safety as less than significant. Interestingly, the DEIR does not actually evaluate the project's effects on fire or fire-related emergencies. Instead, its "insignificant" finding is based almost exclusively on the applicant's commitment to comply with the Fire Protection Plan (FPP) prepared for the site. It is fine that the applicant has agreed to conform his activities to the terms and conditions of the FPP and to the other fire-related regulations that apply to the proposed development. But these commitments to follow the law do not constitute an actual analysis of the project's potential to add to the existing fire hazards in the area or to frustrate emergency response to (and escape from) a fire should one occur. For this reason alone, the DEIR is inadequate. In addition, there is little data demonstrating that Cleveland Trail, without major structural improvements, will adequately serve as a secondary emergency access. Finally, the DEIR refers to Lone Oak Lane as yet another emergency access. This reference should be removed, as Lone Oak Lane is a private road over which neither the applicant nor the Vista Fire Protection District has easement rights.

5. **Water Quality.** The DEIR assumes that the detention basins installed by the applicant will not only capture storm and nuisance water runoff emanating from the project but will remove all of its impurities before being released gradually into Buena Creek. There is, however, no analysis – and therefore no data – demonstrating that the detention basins will actually perform as promised. The applicant's faith in the detention basins – even if shared by DPLU staff – is not sufficient, especially given the impaired nature of the water bodies that receive the flows from Buena Creek. We also note that the DEIR makes no attempt to quantify the amount of perched ground water that ultimately leaves the project site and enters Buena Creek. Such groundwater is likely to be plentiful in light of (1) the irrigation habits of most homeowners and (2) the granitic substrate that underlies much of the project site. Nuisance water of this type often contains a variety of pollutants, including pesticides and fertilizers. Further, there is no indication in the DEIR that perched ground water migrating toward Buena Creek will be captured by the proposed detention basins.

6. **Land Use.** As discussed above, the proposed project, if approved, would join a host of others for which the County has granted General Plan amendments and zone changes at the request of a developer-applicant. The DEIR fails to analyze the cumulative impact of this practice of routinely approving projects that do not conform to the *existing* land use regime. As a result, the DEIR is inadequate.

G12. The EIR states that significant impacts associated with invasive plants could potentially occur. Implementation of Mitigation Measure M-BI-3 on page 2.2-21 would mitigate such impacts below of level of significance. It should also be noted that the Project conceptual landscape plan does not contain invasive non-native plant species and that the proposed clustering of the Project is a primary tool to reduce edge effects. The fire walls adjacent to open space also would result in some lowering of plant colonization associated with residential uses. Regardless, the Project would implement a Habitat Management Plan (HMP), which would include habitat monitoring and management within open space for such items as colonization of invasive plant species. The HMP also discusses exotic species removal and the education of homeowners. Overall, post mitigation, the Project's contribution to edge effects in the area would be less than significant.

G13. The County disagrees that the EIR dismisses wildfire-related impacts or that the EIR analysis is inadequate. This Project was in development during the 2003 and 2007 wildfires in the County, and has been held to the latest design standards. As noted in the comment, a Fire Protection Plan (FPP) was prepared for the Project, which acknowledged that the Project site is in a high Urban Wildland Interface fire hazard area. The purpose of the FPP is to address the potential for wildfire and identify measures that will lower risk to acceptable levels. The efficacy of the measures proposed is subject to technical specialist review by the serving fire department as well as County fire staff. Once that FPP is accepted, a project designed in conformance with it, meets the standards necessary to reduce wildfire impacts to less than significant levels. The Project FPP includes measures that the Project has incorporated as design elements to address wildfire issues (see pages 7-16 and 7-17 of the EIR). These measures include restriction of the development to a more defensible portion of the site, fire walls located between proposed residences and abutting wildlands, fuel management zones to be maintained by the Homeowners' Association (HOA), landscaping that excludes species from the Prohibited Plant Materials list in the FPP, incorporation of applicable ignition and fire resistance measures for structures, street design in compliance with the San Diego County Fire Code, and provision of adequate emergency vehicle access. In addition, the Vista Fire Protection District (VFPD), which would serve the Project, would have a response time of less than five minutes, as required by the County's General Plan. Specifics are addressed on pages 3.1-18 through 3.1-20 of the EIR. Both the VFPD and County Fire Marshal provided input to, and approved, the final FPP. The fact that the Project would not overall increase the wildland interface, but generally shift it to the east, is specifically addressed on page 3.1-20 of the EIR. As noted on that same page, "the Proposed Project, will utilize the best available technologies for fire protection as part of Project design, and further demonstrates that the rate of spread of fire would be reduced enough for adequate response by the fire authority having jurisdiction. Specifically in the case of the Proposed Project, implementation of the required Project design features actually would provide an increased level of protection to homes located west of the Project site,

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which currently are located immediately at the wildland/urban interface and do not incorporate the same level of fire-protective features.” Accordingly, impacts associated with wildland fire hazards and emergency response times would be less than significant. No additional analysis is required.

G14. During Project construction, Cleveland Trail would be upgraded as discussed on page 1-5 of the EIR. Improvements would include generally repaving the road to 24 feet in width, although a short section of existing road at the crossing of Buena Creek would remain at 20 feet in width per the Vista Fire Protection District (see letter of April 21, 2009 in the Project FPP). Brush clearing and construction of a fire wall along the eastern end of Cleveland Trail also would take place. The VFPD and County Fire Marshal agree that such improvements would render Cleveland Trail adequate to serve as an emergency access road for the Project.

G15. The EIR does not refer to Lone Oak Lane as another emergency access road for the Proposed Project. To the contrary, the EIR states on page 1-11, “In response to comments received on the circulated MND, the proposed emergency access to Lone Oak Lane was relocated to a connection with Cleveland Trail.” Emergency access/egress for both fire vehicles and residents is specifically noted on page 1-4 of the EIR as occurring through Lot F at the western boundary of the residential development to Cleveland Trail. The EIR also discloses on page 1-4 that: “The paved portion of Street E would end at the western Project boundary, approximately 200 feet east of the existing terminus of paved Lone Oak Lane. The street would be gated at both its eastern and western extents and could be accessed by emergency vehicles.” While neither proposed nor anticipated by the Project, given the sensitivity of this issue relative to the Lone Oak neighbors, it would not be strictly accurate to pretend that emergency service providers would not take advantage of any avenue they feel best provides access in the event of extreme duress. The EIR only discloses this possibility.

G16. The basins mentioned in this comment are detention/bioretention basins. These basins serve to both remove pollutants from runoff, and detain increased runoff from the proposed development to an amount of runoff equal to the pre-development condition. Bioretention basins are acknowledged as one of the most effective best management practices (BMPs) for removal of pollutants, and function as a soil and plant-based filtration device that removes pollutants through a variety of physical, biological and chemical treatment processes. These facilities normally consist of a grass buffer strip, sand bed, ponding area, organic layer or mulch layer planting soil, and plants. The runoff’s velocity is reduced by passing over or through buffer strip and subsequently distributed evenly along a ponding area. The exfiltration of the stored water in the bioretention area/mulch layer planting soil into the underlying soils occurs over a period of days. This knowledge is part of current public agency planning background incorporated into current stormwater management ordinances. Additional information has, however, been incorporated into the EIR for clarification in response to the commentor’s query. This additional information can be found in the EIR on pages 3.1-33 and 3.1-34.

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Groundwater would not be impaired by the runoff generated from the site due to the native soil types. The soil types for this project are Type C and D. These soil types are considered low permeable soils, which percolate poorly; accordingly, there would be less runoff percolating into the native soil and into the groundwater. Runoff would flow onto the surface and into the proposed storm water conveyance structures and BMPs. Even if the soil type was one of the permeable types, runoff would be treated naturally through infiltration into the native soil before reaching groundwater. Then the Project-required infiltration BMPs would be applicable instead of the proposed detention/bioretention basins.

Concerns over runoff resulting from over irrigation are addressed by Project design. The plants within the landscape palette include native and drought-tolerant species. The Project would use drip irrigation for homeowner association (HOA)-managed landscaping, with sensors on the irrigation system to ensure that irrigation is not occurring when the weather is wet/rainy (see page 3.1-28 of the EIR). Any excess water would be anticipated to evaporate or evapotranspire rather than constitute runoff. If (unexpected) runoff does occur, it would be routed to the detention/bioretention basins discussed above.

Regarding perched groundwater, the EIR notes that the Project Geotechnical Investigation (Appendix M) included the excavation of 21 on-site trenches extending to depths of between approximately 3 and 14 feet. No groundwater was observed during these excavations, although it also was noted that “[d]ue to the relatively low permeability of the hard, unfractured metamorphic bedrock, localized zones of perched water may develop following episodes of heavy precipitation and/or excessive irrigation” (Western 2002). The issue of excessive irrigation is addressed above. Although not detected during project geotechnical tests, should such aquifers exist, they generally consist of one or more unconfined aquifers supported by impermeable or semi-permeable strata, and are typically limited in volume and extent. Regardless, any minor Project related waters trapped within a perched aquifer also would be expected to ultimately drain toward downstream waters through the intervening soils, garnering all the cleansing advantages of water filtered through the detention/bioretention basins. Less than significant impacts to water quality would result, and no change is required to the EIR.

G17. Please refer to Response to Comment G1. With regard to the cumulative effect of County GPAs, two projects from the cumulative projects list contained GPAs; Merriam Mountains and Orchard Hills. The land use conformity issues were discussed in Chapter 3.0 of the EIR, with planning document elements being addressed via required GPAs. With regard to the visual changes associated with the GPAs and rezones, neither of the two projects fell within the cumulative visual study area (i.e., visible within the viewshed of a viewer in conjunction with the Proposed Project). Also, it is important to note that with regard to Sugarbush, clustering is specifically allowed under the General Plan and the proposed zoning requirements for the Project are the same as those that apply to the Lone Oak neighborhood. Please note, the Merriam Mountains project was denied by the Board of Supervisors on March 24, 2010 which lends contrary support to the

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statement in the comment implying there is routine approval of projects that do not conform to the existing General Plan.

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7. Water Consumption. The DEIR neither quantifies the project's water consumption (potable and irrigation water), nor assesses that consumption within the context of regional water supply and demand. A "will-serve" letter is no substitute for analysis.

8. Alternatives. Under CEQA, the alternatives analysis is the heart of any EIR, as it is the only section of the document that affords the decision-makers (and the public) the opportunity to compare the proposed project against other development scenarios. In the case of the Sugarbush project, the DEIR's alternatives analysis is not only thin, it is biased in its presentation. For example, in its discussion of the No Project/Existing Zoning Alternative, the DEIR assumes that, under such an alternative, homes will be constructed along or within the ephemeral creek adjacent to the proposed Sugarbush Drive extension. There is no plausible explanation for this design assumption – except that it makes the alternative appear biologically damaging and therefore easy to dismiss. Worse, the DEIR makes the same spurious assumption in its description of the Reduced Project Alternative. The alternatives analysis also suffers from a lack of comparative data. It is simply impossible, based on the information provided, to weigh the relative advantages and disadvantages of the alternatives *vis-à-vis* the proposed project.

9. Traffic. The DEIR traffic analysis is deficient in that it assesses cumulative traffic impact only in the near-term. In addition, it is unclear whether the traffic model employed in the DEIR was sensitive enough to account for the County's penchant for allowing General Plan amendments and zone changes, both of which tend to intensify development and increase traffic beyond what the General Plan and zoning regime originally contemplated. In other words, if the traffic model simply based its traffic forecasts on the land uses designated in the General Plan, the resulting traffic numbers are not likely to reflect reality.

10. Noise. It appears that the DEIR used the wrong noise metric when assessing the effect of intermittent and/or instantaneous sound, such as that produced during construction activities. In addition, the DEIR fails to evaluate noise impacts on sensitive biological resources on site (and adjacent to the project). We also suggest that the applicant be required to install sound walls or berms adjacent to surrounding residential properties.

11. Miscellaneous Issues. The DEIR fails to address the following miscellaneous issues: (1) construction-related damage to local roadways, (2) past history of success or failure of Homeowners Associations with respect to managing biologically sensitive land, (3) inability of fire barriers to stop domestic animals, especially cats, from entering biologically sensitive areas, (4) enforcement of noise mitigation measures, and (5) misstatement in cumulative impacts analysis regarding the number of housing units being proposed in the region.

12. Inadequate Response to Issues Raised in Comments on MND. For almost three years, DPLU and the applicant attempted to process this project with only a Mitigated Negative Declaration (MND). On behalf of my clients, I submitted six comment letters between

G18. The EIR states on page 3.2-12 that the Project is projected to require approximately 20 to 25 acre-feet of water per year. A Water Supply Assessment is not necessary for the Proposed Project because it does not trigger the California state law threshold for such an analysis pursuant to California Water Code Section 10912. Vista Irrigation District, which will serve the Project, distributed 20,866 acre-feet of water to its customers in 2008-2009. The project demand will account for an additional 0.1 percent of that total. No additional analysis is required.

G19. The County respectfully disagrees. CEQA Guidelines Section 15126.6(c) states in part that the range of potential alternatives to a proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and avoid or substantially lessen one or more of the significant effects of the project.

With regard to the nature of the alternatives, the Proposed Project is the result of meetings held and compromises made by the Applicant with County staff, resource agency staff, and abutting property owners, as described on pages 1-11 and 1-12, as well as page 1-15 of the EIR. Please refer to EIR Section 1.2.2.3, Project History/Background for additional detail. After substantial refinement regarding overall footprint, Project make-up and number of lots, the Project was originally proposed for CEQA evaluation under the Mitigated Negative Declaration review format (a format for which alternatives are not necessary). Although no significant and unmitigable CEQA impacts would result from Project implementation, the County ultimately required preparation of an EIR. Alternatives were developed in order to comply with CEQA EIR requirements.

With regard to the ephemeral creek, please refer to Response to Comment G11 regarding its overall value. With regard to the Existing Zoning Alternative, comparing Figure 2.2-2 (Jurisdictional Delineation) with Figure 4-1 (No Project/Existing Zoning Alternative), shows that the jurisdictional feature is outside the grading footprint for the closest lots aligned along future Sugarbush Drive (4, 5 and 6). The pads would be upslope of the drainage, but strict compliance with the County Grading Ordinance would render any potential adverse effects to less than significant levels during construction. Once developed, the lots would drain to the detention/bioretenention basin located in the western extent of the Project near Cleveland Trail during residential use. Regarding the Reduced Project Alternative, review of Figure 4-2 (Reduced Project Alternative) against Figure 2.2-2 shows that none of the lots are in the vicinity of this ephemeral drainage. Comparison of both alternatives relative to the Proposed Project is provided in Sections 4.3.2 and 4.4.2, respectively, of the EIR. While the Existing Zoning Alternative would have slightly increased biological impacts (all mitigable), the Reduced Project Alternative would have slightly reduced impacts (again, all mitigable). The relative nature of the impacts is also reflected on Table 4-1, Comparison of Project Alternative Impacts to Proposed Project Impacts.

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- G20. The County agrees that simply basing the cumulative analysis on the adopted General Plan could have resulted in fewer trips than is currently likely. In accordance with County Traffic and Transportation guidelines and CEQA Guidelines Section 15130(b)(1), cumulative analyses were prepared based on a list of projects approach. For the cumulative analysis, traffic from 129 proposed projects was added to existing traffic conditions plus the Proposed Project traffic. The County's Public Facility Element Policy 1.2 requires a buildout analysis when a GPA results in an increase of units (and resulting traffic) over that planned in the adopted General Plan. In the case of the proposed project, Sugarbush proposes 45 residential units which is less than the potential 57 units allowed under the existing General Plan. In addition, the cumulative traffic analysis accounted for projects requiring GPAs and increasing density such as Orchard Hills and Merriam Mountains, as well as recently approved Major Use Permits for the TERI and Casa De Amparo projects. However, the Merriam Mountains development project has since been denied by the Board of Supervisors. Therefore, the cumulative traffic analysis is adequate and considered conservative in light of the Merriam Mountains denial, and no additional analysis is required.
- G21. The County disagrees that an incorrect metric was used. The threshold for construction activities was specified on page 2.5-5 of the EIR as "construction noise that exceeds the standards and allowable hours listed in the San Diego County Code, Section 36.409, Sound Level Limitations on Construction Equipment, or impulsive noise that exceeds the standards listed in San Diego Code Section 36.410, Sound Level Limitations on Impulsive Noise." That guideline is based on the County's Guidelines for Determining Significance – Noise (January 27, 2009). Section 36.409 specifies the metric as an average sound level for an eight-hour period, between 7:00 a.m. and 7:00 p.m., for normal construction equipment. Section 36.410 specifies the metric as a maximum sound level for impulsive noise sources. The average noise level was based on an eight-hour average level, consistent with the current metric. The only potential Project-related construction activities that would result in impulsive noise would be blasting and rock breaking. Both of these were addressed consistent with Section 36.410 in the 2009 Environmental Noise Assessment Addendum (page 3). As stated on page 2.5-6 of the EIR, while impulsive noise would fall within acceptable thresholds based on the ordinance, noise thresholds for general construction activities would be exceeded during construction activities for residences closest to the grading footprint (i.e., along the western Project boundary and potentially along Cleveland Trail). Mitigation was proposed (N-M-1 and N-M-2a through 2d). Please see pages 2.5-10 and 2.5-11 of the EIR.
- G22. The EIR specifically provides thresholds for noise impacts on sensitive species (3e and g on pages 2.2-12 and 13). Noise impacts are discussed on page 2.2-15 (Impact B1-10). Mitigation Measure M-BI-8 states that no grading or clearing would occur during gnatcatcher breeding season unless no gnatcatchers are found during pre construction surveys performed by a qualified biologist. Mitigation Measure M BI 10 states that no construction activities are allowed near an active gnatcatcher

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nest if noise levels at the nest would exceed 60 dB(A) Leq. In addition, the fire walls abutting the proposed open space would also act as sound barriers.

With regard to surrounding residential properties, no significant noise impact would occur following Project buildout (refer to Section 2.5.2 of the EIR). Construction phase impacts, however, were identified as potentially significant. The mitigation measure requested by the commentor (sound walls) is required in M-N-1 and M-N-2b during the construction period, as appropriate.

G23. The County does not agree that the Proposed Project would damage local roadways. The Project would not require any export/import of fill, thus eliminating the heaviest repetitive construction-related vehicles. The only construction-related vehicles that would be present on the roadways would include trucks hauling equipment and building materials and worker vehicles. Analysis associated with roadway damage from these vehicles would be speculative and is not required.

G24. Analysis of the efficacy of HOA-managed open space is not relevant to this Project and is beyond the purview of the EIR. The HOA would not be managing the proposed open space; a qualified habitat management organization would do so (see page 1-7 of the EIR).

G25. The EIR acknowledges that domestic animals within open space can pose a threat to native wildlife (page 2.2-14). The EIR also states that although it would not completely stop domesticated animals such as cats, the proposed six-foot-high fire wall “would minimize the incursion of domestic animals into the open space. In addition, “the presence of coyotes on site would help control domestic animals that may enter the native habitat” (page 2.2-15). Overall, impacts are assessed as less than significant.

G26. Mitigation Measure M-N-2c requires noise monitoring, and states, “Noise monitoring shall be conducted by an approved County noise consultant during the initial construction equipment operations to ensure that noise levels comply with County Noise Ordinance Section 36.409.” With regard to gnatcatchers, Mitigation Measure M-BI-10 states that: “Noise levels will be periodically monitored by the monitoring biologist and/or a noise specialist.”

G27. With the denial of the Merriam Mountains development project by the Board of Supervisors on March 24, 2010, the cumulative analyses are now very conservative with respect to the number of housing units considered.

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GATZKE DILLON & BALLANCE LLP

Robert Hingtgen
November 30, 2009
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June 26, 2006 and April 30, 2009, each of which criticized the MND for analytical deficiencies and demanded that DPLU prepare a full EIR. An EIR has now been prepared. Unfortunately, however, the DEIR for the project is an EIR in name only. Except for a few updates to previous technical studies, it contains little in the way of new information. Even more disturbing, the DEIR fails to address the issues set forth in my six comment letters to the level required by CEQA. For that reason, I am incorporating by this reference each of the six letters into my present comments on the DEIR. The comments set forth in those letters should be treated as comments on the DEIR. DPLU should respond to them accordingly. Copies of the six letters are attached hereto for the convenience of County staff.

Thank you for the opportunity to comment on this project. If you have questions concerning the contents of this letter, please do not hesitate to contact me.

Sincerely,



David P Hubbard
of
Gatzke Dillon & Ballance LLP

DPH:rlf

G28. The County respectfully disagrees that the EIR does not appropriately address issues previously raised or is inadequate because it does not contain substantial new information. The Project was originally proposed for CEQA evaluation under the Mitigated Negative Declaration review format. Although no significant and unmitigable CEQA impacts have ever been attributed to Project implementation, the County ultimately required preparation of an EIR. Use of an EIR dictates changes in formats, and new evaluative tools (such as inclusion of alternatives evaluation. Additional information has been provided in the DEIR related to biological and cultural resources, potential noise impacts, and site access. The technical review provided is adequate to address relevant issues. With regard to responses to prior letters, please refer to Responses to Comments G29 through G77, below.

COMMENTS

RESPONSES

EXHIBIT 1

LAW OFFICES OF DAVID P. HUBBARD

960 Canterbury Place, Suite 220
 Escondido, California 92025
 Telephone (760) 432-9917
 Facsimile (760) 743-9926
 Email dph@ecobalance.biz

June 26, 2006

Robert Hingtgen
 Department of Planning and Land Use
 County of San Diego
 5201 Ruffin Road
 San Diego, CA 92123

Re: Comments on Proposed Sugarbush Residential Development – TM 5295/RPL 4

Dear Mr. Hingtgen:

I am writing to memorialize the issues raised during our meeting of June 13, 2006, regarding TM 5295, also known as the Sugarbush residential project.

Density: As I mentioned in my opening remarks, and as my clients reiterated in their individual comments, most of the impacts of this project stem from the developer's desire to build more homes than the current planning documents and zoning designation would allow. Put simply, were the developer not seeking plan amendments and a zone change, my clients probably would not be objecting to the project. During our meeting, however, you stated that given the size of the parcel in question, the developer could build the same number of homes as proposed, perhaps more, *without* the plan amendments and zone change. I do not think this is a credible position for the County to take. As I understand it, for the developer to place that many homes on the subject parcel, under the existing planning guidance and zoning, he would have to spread those homes out over the entire property, damaging a significant portion of the existing biological resources. It is highly doubtful that the County – to say nothing of the wildlife agencies – would allow such a configuration. So while the developer, as a *theoretical* matter, may be able to place 45 or more homes on the site under the current plan and zoning documents, such a development has no realistic chance of being approved. But this is not even the best argument against the position you articulated during our meeting. The best argument is this: No developer would spend the time and money to process plan amendments and a zone change if he could build as many or more homes without them.

G29. The General Plan would allow 57 theoretical units on the Project property. With the clustering proposed, thereby preserving steep slopes pursuant to County ordinance and native vegetation pursuant to Wildlife Agency request, a total of 47 units would fit on the property. A total of 45 residential units are proposed. Please note that the General Plan explicitly allows clustering, a tool that addresses the site constraints related to steep slopes and sensitive biological resources. As shown on pages 3.1-42 and 43 of the EIR, the specific criteria required to support clustering are met by this Project. The only reason a General Plan Amendment is required is because the North County Metropolitan Subregional Plan is silent on the issue of clustering. As noted in Response to Comment G1, the proposed Project would actually decrease density from that anticipated with the current General Plan.

As historically discussed with the commentor, and as explained in the EIR (please refer to Section 1.2.2.3, Project Background/History on pages 1-11 and 1-12 of the EIR), the current layout was defined based upon meetings between the County, Applicant and Wildlife Agencies, as well as input from abutting neighbors. The County agrees that the site would require rezoning in order to be consistent with the Proposed Project layout of the 45 residences. The proposed zoning requirements are essentially the same as underlies the Lone Oak neighborhood along the Project's western boundary.

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Fire Safety/Emergency Access: The developer, with help from the County, has placed himself in an untenable position with regard to fire safety: He has selected Lone Oak Lane/Road as his secondary emergency access (primary emergency access in the event Sugarbush cannot be reached or is otherwise not serviceable during a fire) despite the fact that he has not legal means of widening the lane to the standards required by the Vista Fire Protection District (VFPD). When discussing the access issue, VFPD officials have repeatedly stated that Lone Oak Lane would have to be widened to a minimum paved width of 24 feet throughout. Some of the lane's sharp turns would likely have to be straightened out as well. None of this work, however, can be accomplished within the existing easement, which is only 20 feet wide in many places. Therefore, the developer would have to expand the easement by purchasing frontage from existing property owners who live along the narrower portions of the lane. So far, he has made no such offer, and there is strong evidence that at least some of the affected land owners would not sell. In light of this, it seems doubtful that Sugarbush developer will be able to designate Lone Oak Lane as any kind of emergency access – unless of course, the County and VFPD elect to compromise the safety of existing residence and excuse the developer from widening the lane to the standard paved width of 24 feet. If such an election were made, my clients would appeal to the Board of Supervisors, the courts, and the media to fight it. This is a life-safety issue – one with which everyone in this County should be familiar after the fires of October 2003. We will not compromise on it.

Two related points must also be mentioned.

First, the Mitigated Negative Declaration and Initial Study (collectively, "MND") says very little about the emergency access problem. It does not disclose the difficulties inherent in securing the easement rights necessary to widen the lane to the specifications of the VFPD; nor does it explain or evaluate the potential life-safety impacts of allowing the developer to use Lone Oak Lane/Road as an emergency access without the widening it to the minimum standard. This is certainly a potentially significant impact that has not been adequately analyzed or mitigated. As a result, the MND cannot stand; an EIR must be prepared instead.

Second, the plot plan for the proposed development clearly shows a 51-foot street easement connecting TM 5925 to the adjoining property to the east. This means that when this adjoining property is developed with homes (it currently has the same residential zoning as TM 5925), it too will use Lone Oak Lane/Road as an emergency access. Further, like TM 5925, residents in this future development will have no way out, other than Lone Oak Lane, in the event that Sugarbush is closed by fire. Vehicles from this development, coupled with those from TM 5925, will then clog Lone Oak Lane just as those who live on the lane are trying to escape, leading to gridlock and potential loss of life. To make matters worse, emergency vehicles, traveling in the opposite direction, will be unable to reach the fire due to the cars massed along the lane. This tragic but predictable outcome is not discussed in the MND, yet another defect in the document. We do not accept your argument that the County need not consider future development on the adjoining property when assessing the fire safety/emergency access impacts of TM 5925. That no development plans for that property have been submitted to the County is immaterial; the County's own planning documents and zoning designation indicate how many homes could (and

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likely will) be built there. Further, CEQA demands this kind of analysis, as it requires project impacts to be considered in light of existing and future planned conditions.

Biological Resource Impacts: According to the MND, the proposed project will eliminate more than 34 acres of high-value Coastal Sage Scrub (CSS), obligate habitat for the California gnatcatcher, a federally-listed threatened species. Indeed, a nesting pair of gnatcatchers was observed on site. This loss is clearly significant under CEQA; the question is whether it will be adequately mitigated. The unfortunate fact, however, is that the loss is not mitigated at all. That is, the project does not plan to restore or recreate *any* CSS habitat. Instead, the MND claims that the loss of 34 acres of CSS, some of it *occupied* by nesting gnatcatchers, can be mitigated simply by not building on or otherwise destroying the remaining CSS on-site. This is not mitigation. It does not offset in any way the net loss of 34 acres of CSS. Regardless of how the wildlife agencies feel about this – regardless of whether they would allow it – the impact is still significant under CEQA and needs to be identified as such. Moreover, because it is a significant, unmitigated impact, the MND will not suffice. An EIR – complete with a discussion of alternatives – must be prepared.

My clients are also concerned that the wildlife agencies, in their most recent comment letter, have recommended that the proposed extension of Sugarbush Road be eliminated from the project design to protect resources, and that the project take its *primary* access off of Lone Oak Lane/Road. The traffic and life-safety impacts of such a radical change in the project design would be significant and have not been analyzed in the MND. Therefore, the document provides inadequate support for this concept.

Air Quality Impacts: The project proposes significant grading activities, giving rise to diesel exhaust and PM₁₀ emissions. The MND fails to mention, much less analyze, the former, even though (1) diesel exhaust particulate has been designated as a Toxic Air Contaminant (TAC) and “known carcinogen” by the California Air Resources Board, and (2) “sensitive receptors” in the form of residences exist immediately adjacent to the project site. As for PM₁₀ emissions, the MND provides an inadequate description of these impacts, as it fails to quantify the amount of particulate matter the project will generate. At the very least, the project’s PM₁₀ emissions will contribute to a significant *cumulative* impact, as the County is currently a non-attainment area for this pollutant.

Visual Impacts/Community Character: Of the many dubious conclusions drawn in the MND, perhaps none is more off the mark than the finding that the proposed project creates no significant visual impacts and is consistent with the existing community character. The project site is currently pristine open space in a rural area of the County. It lies next to existing residential areas that are themselves rural in character – rolling hills, narrow winding roads, small homes on large lots with mature landscaping, and lots of space between structures. The proposed project looks nothing like this, and includes none of these key features. Instead, the developer proposes to place 45 large homes on small lots, tightly packed on two parallel, dead-straight streets. A waffle-iron possesses more visual character and variability. This is not the worst of it, however. The homes will be built on slopes, some manufactured to a height of 40

G30. This comment pre-dates the current Project design. Lone Oak Lane/Road are not being proposed as emergency access for the Project. Emergency access is designated by the Project to/from upgraded Cleveland Trail. The comment is no longer relevant to the Project and no additional response is necessary.

G31. As a point of clarification, the Proposed Project would impact approximately 24 acres of coastal sage scrub, not 34 acres as indicated in this comment (see Table 2.2-4 in the EIR). Please also refer to Responses to Comments G8 and G9 concerning the California gnatcatcher, and impacts and mitigation for coastal sage scrub, respectively.

G32. The use of Lone Oak Lane/Road for primary access is not addressed in the EIR (or prior MND format CEQA document) because it is not proposed. The County does not support use of a route other than the legal and anticipated extension of Sugarbush Drive. This has been explicitly addressed as part of this EIR in Response to Comment A1 to the California Department of Fish and Game. No additional analysis is necessary.

G33. The EIR analyzes impacts associated with diesel exhaust particulates on pages 3.1-12 and 3.1-13. As shown in that discussion, the maximum excess cancer risk predicted would be 0.337 in a million, which is below the County’s significant risk level of 1 in a million. Risks associated with exposure to diesel particulate during construction would, therefore, be less than significant. No changes are required to the analysis.

G34. Tables 3.1.1-5 through 3.1.1-7 quantify the estimated daily emissions of particulate matter for both the construction and operational phases of the project, including quantification of both PM₁₀ and PM_{2.5}. The referenced tables, along with the analysis on pages 3.1-8 through 3.1-10, demonstrate that impacts associated with PM₁₀ and PM_{2.5} would be less than significant. No additional analysis is required.

G35. The County disagrees with this comment. The Project’s PM₁₀ emissions would not contribute considerably to a significant cumulative impact, as discussed on page 3.1-16 of the EIR. Although the San Diego Air Basin is not in attainment with the California 24 hour average for PM₁₀, both the calculated short-term construction emissions and the calculated operational emissions are below the Air Pollution Control District (APCD) established threshold for even the preparation of Air Quality Impact Assessments set forth in the New Source Review APCD Rule 20.2. In addition, the Project would conform to the Regional Air Quality Strategy. Project emissions of PM₁₀, therefore, would be less than cumulatively considerable.

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feet above existing grade. And most of these homes will be two-story. This combination of densely packed large homes on high slopes creates a "citadel" effect that is wholly inconsistent with the existing character of the community and landscape.

There is no escaping that this is a significant impact. In our discussion, however, you argued that the lot sizes proposed are not greatly different from those in other subdivisions nearby. Even if this were true – and we are not accepting your position on the point – lot size is not the only, or even the most important, factor when considering aesthetics and community character. Lot coverage and building placement are just as critical. Most of the homes in the area, especially in the older neighborhoods immediately adjacent to the project site, are small in relation to the size of the lot. A great deal of land surrounds these homes and separates them from the next nearest house, thus creating visual space between structures. This is traditional rural development; whereas the proposed project would disrupt this aesthetic by placing a fortress of block-type track homes above the existing neighborhood – a looming, ugly presence.

This situation could be improved substantially if the project were reconfigured with fewer homes on meandering, serpentine streets. The homes could be well-spaced and given lower profiles (i.e., single-story) to render them consistent with the currently community. We recommend that the County and developer consider this option.

Water Quality Impacts: The project will eliminate more than 34 acres of natural habitat and replace it with impervious surfaces, including streets, driveways and homes. The development itself will generate stormwater runoff and nuisance runoff, much of it contaminated with urban pollutants such as petro-chemicals, hydrocarbons, silt, pet waste, pesticides, ammonia, herbicides, fertilizers, asbestos (brake pads), and others. The water quality study conducted for the project does not sufficiently evaluate the project's potential to add these pollutants to local and regional water bodies. This is striking given that the project site drains into Buena Creek and thence into Agua Hedionda Lagoon, both of which have been designated by the Regional Water Quality Control Board (RWQCB) as "impaired water segments" pursuant to Section 303(d) of the Clean Water Act. The MND, while acknowledging the "impaired" status of these two water bodies, nevertheless claims that the project will not contribute to this impairment because the project site is located a few miles upstream of the impairment area. The person who wrote this statement, however, completely misunderstands the 303(d) impairment designation and what it means. Many, if not most, 303(d) impaired water segments are located at the bottom of the watershed system to which they are connected. They are the "collection sinks" where pollutants from upstream sources gather and settle. Therefore, the fact that the impaired segments of Buena Creek and Agua Hedionda Lagoon are a few miles downstream of the project site does not mean project-related discharges will not contribute to the impairment. On the contrary, the project would simply join other upstream sources which, together, create the impairment downstream. The MND's complete mis-read of this situation renders the document inadequate as a matter of law.

G36. The County respectfully disagrees with the assertions made in the comment. The project site is not "currently pristine open space" and proposed lots are not "small" lots. The Project-modified landforms would not appear out of scale with surrounding landforms once grading is complete and landscaping is in place. As discussed in the EIR, slope modification primarily would be visible from adjacent properties west of the Project. Only eight of the proposed residential lots would abut the Lone Oak neighborhood on the Project's western boundary, and homes on these lots would be set back a minimum of 100 feet from adjacent lots in the Lone Oak neighborhood. Proposed Project slopes are addressed in detail in the EIR on pages 2.1-11 and 12, and 2.1-14 and 15.

Regarding community character, including driveways and hardscape, please refer to Response to Comment G6. Specifically regarding lot size and residential layout, as noted on page 3.1-49 of the EIR, "although lot pads shown on the Tentative Map and Site Plan appear uniform, that does not necessarily mean that housing would reflect this uniform layout. The reasons for this are that the buildable portion (area and shape) of each lot varies based on the setbacks and future homes may be located anywhere inside that buildable portion of the lot." The project is proposing varying lot sizes with varying lot widths and varying front yard setbacks. This will allow garages to be turned away from the street to create a more interesting and appealing streetscape. In addition, planned structures would not cover the entire buildable portions of the lots. As noted in Response to Comment G6, proposed lots range from 0.50 acre to 1.73 acres, with an average resulting lot size of 0.78 acre. Within these lots, pads would range in size from 10,554 to 21,923 square feet. Within these pads, there is also variation regarding usable area. The proposed streets must meet current road standards for public safety and emergency vehicle response as required by the Department of Public Works and Vista Fire Protection District.

Robert Hingtgen, DPLU
June 26, 2006
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Then there is the matter of mitigation. The MND contends that the project's storm and nuisance runoff impacts will be mitigated by implementation of Best Management Practices or "BMPs". As I explained at our meeting, however, BMPs are neither adequate nor appropriate for impacts on 303(d) impaired water segments. The 303(d) designation, by statutory definition, signifies that the water segment in question cannot be sufficiently protected (or restored) through BMPs. Instead, the actual pollutant levels must be reduced through the development and implementation of Total Maximum Daily Loads (TMDLs). There is no discussion in the MND about this issue. Thus there is no way of knowing whether the project (a) is compliant with the TMDLs established for Buena Creek and Agua Hedionda Lagoon or (b) would frustrate development of such TMDLs. For this reason, among others, the MND is defective and cannot serve. An EIR must be prepared.

Conclusion: We thank you for meeting with us to discuss our concerns about the proposed project. We would be happy to meet again, this time with the developer and his attorney, to attempt to resolve these issues. Please keep in mind, however, that the July 14 hearing date is fast approaching and soon we will be forced to bring our concerns to the attention of the Planning Commission in an open public forum.

Sincerely,

DAVID P. HUBBARD, ESQ.

cc: Lone Oak Lane Group

G37. The Sugarbush Project has been designed to be a Low Impact Development (LID). Buena Creek is the ultimate "Receiving Water" for the site; i.e., treated storm waters would be released into Buena Creek. The detention/bioretention basins themselves would filter stormwater/site runoff anticipated to reach the Buena Creek drainage. As stated on page 1-8 of the EIR: The basins are designed to have high pollutant removal capacity for coarse sediment, trash and pollutants such as nutrients, heavy metals and pesticides..." The Project would incorporate LID techniques to reduce runoff and pollutants from the proposed development area. As stated on page 3.1-32: "LID measures are intended to mimic predevelopment hydrologic conditions by using design practices and techniques to effectively capture, filter, store, evaporate, detain and infiltrate runoff close to its source."

LID strategies proposed for this project include:

1. Conservation of natural areas, soils, and vegetation by providing 67 percent of the site as permanent open space.
2. Minimization of disturbance to natural drainages by setback development envelopes, and restriction of heavy construction equipment access to planned open space areas.
3. Minimization and disconnection of impervious surfaces by clustered lot design, and drainage of runoff from impervious surfaces to pervious areas.
4. Minimization of soil compaction by restricting heavy construction equipment access to planned open space.
5. Proposed vegetated swales on each lot (LID building design; down spout to swale).
6. Drainage of driveways into landscaped areas where practicable.
7. LID landscaping design, soil amendments, reuse of native soil, and smart irrigation systems.

In addition, the Project would incorporate source control BMPs and treatment control BMPs. Page 3.1-33 states: "Source control BMPs are intended to avoid or minimize the introduction of contaminants into storm drains and natural drainages by reducing on-site contaminant generation and off-site contaminant transport to the [maximum extent practicable]," and, "Treatment control (or structural) BMPs are designed to remove pollutants from urban runoff for a design storm event to the [maximum extent practicable] through means such as filtering, treatment or infiltration.

Specifically with regard to Total Maximum Daily Loads (TMDLs), TMDLs have not yet been adopted for Agua Hedionda Creek, Buena Creek, or Agua Hedionda Lagoon. Compliance with them can therefore not be evaluated. The Proposed Project, however, would comply with all applicable County and state stormwater regulations. The Storm Water Management Plan (SWMP) for the Project achieves this by implementing the appropriate BMPs to reduce the expected pollutants

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and pollutants of concern to a negligible amount. Specifically, the Project targets pollutants identified in the most current (2006) adopted list of 303(d) impacted waters. No significant impacts would result to the downstream impaired water bodies of Buena Creek, Agua Hedionda Creek and Agua Hedionda Lagoon. No additional analysis is necessary.

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EXHIBIT 2

LAW OFFICES OF DAVID P. HUBBARD

960 Canterbury Place, Suite 220
Escondido, California 92025
Telephone (760) 452-9917
Facsimile (760) 743-9926
Email dph@ecobalance.biz

December 28, 2006
By Email and U.S. Mail

Robert Hingtgen
County Planner
Department of Planning and Land Use
County of San Diego
5201 Ruffin Road, Suite B
San Diego, CA 92123

Re: Sugarbush Residential Project - TM5295

Dear Mr. Hingtgen:

As you know, I represent residents and landowners in the Lone Oak and Sugarbush areas of the County with respect to the above-referenced project. Over the past few weeks, we have obtained and reviewed various maps of the subject property and of the surrounding parcels. These maps reveal project impacts that either were not disclosed in the Initial Study/MND or were under-reported in that document. We would like to bring these to your attention now, while the County is updating its environmental review of the proposed project.

Biological Impacts/Open Space

As proposed, the Sugarbush residential subdivision will take access to Buena Creek Road via Sugarbush Drive, which must be extended approximately one-quarter mile to the applicant's property boundary. In its letter to the County, dated January 30, 2006, the United States Fish and Wildlife Service ("FWS") indicated that the proposed extension of Sugarbush Drive would bisect the proposed open space easement, rendering the northwest portion virtually without value from a biological or conservation perspective.¹ After reviewing maps of the area, we not only concur in FWS's assessment, we believe the applicant's (and the County's) entire open space calculus is flawed, resulting in grossly inadequate mitigation for the project's impacts on biological resources, including Coastal Sage Scrub and California gnatcatchers.

¹ The letter from USFWS actually has no date on it. However, according to stamp-marks on the front page, it was received by the County on January 30, 2006.

Robert Hingtgen, County of San Diego
December 28, 2006
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G38 (cont.) The maps clearly show that the proposed extension of Sugarbush Drive will sever the smaller, northwestern open space area from the much larger eastern portion. The smaller northwestern area is also more disturbed. What's more, the road will increase substantially the "edge effects" that degrade the biology in this location. (The road will also increase the "edge effects" along the western edge of the larger portion of the open space easement.)

The maps also reveal something more troubling. The Initial Study/MND states that the project's open space easement (which will be established purportedly to mitigate the project's significant impacts on biological resources) will connect up with open space areas on adjoining parcels, creating a large swath of unbroken open space habitat. However, the maps show that these adjoining parcels – though currently undeveloped – are not zoned as open space or otherwise protected in dedicated open space easements. On the contrary, these parcels are owned by development interests and zoned for residential construction (one unit per two acres). Moreover, the owners of these properties, like the Sugarbush applicant (Mr. Booker), would have the right to seek a zone change allowing them to build homes on half-acre lots.

G39 To our knowledge, none of these adjoining property owners has consented to have all or any portion of their respective parcels dedicated as open space; and certainly the County cannot compel landowners to forfeit their development rights and accept *de facto* open space zoning of their property solely to benefit the Sugarbush applicant and satisfy his need for biological impact mitigation. We have been informed that the owners of the 46-acre parcel adjacent to the subject property intend to develop their land with a residential subdivision in the near future. Clearly, then, this parcel cannot be placed in the Sugarbush "open space" column. Simply put, the Initial Study/MND improperly credits the applicant for "open space" that neither he nor the County controls and that, in all likelihood, will not remain "open space" beyond the near-term. For this reason, the Initial Study/MND is inaccurate and inadequate. The project's biological impacts have not been mitigated sufficiently. In such case, an EIR must be prepared. The MND, as a matter of law, will not suffice.

Project Impacts on Water Courses

G40 In a short paragraph, the Initial Study/MND attempts to describe the project's potential impacts on Buena Creek and Agua Hedionda Lagoon, located downstream.² No other water courses or riparian areas are mentioned as being within the impact zone of the project. Maps available at the County office, however, show something different. They depict, for example, a stream or watercourse whose alignment essentially mimics that of the proposed Sugarbush Drive extension. Indeed, it would appear that this stream/water course will be removed or filled in to allow construction of the road extension. This impact, however, is neither disclosed nor analyzed in the MND – a major failing under CEQA. Other such streams/water courses are also depicted on the map, including at least one that is within a few yards of proposed housing pads in

² Please see my letter to the Planning Commission, dated July 5, 2006, for comments identifying defects in the Initial Study/MND's water quality analysis.

G38. The proposed access from Sugarbush Drive is the only legal access to the Proposed Project that can be improved to public road standards. Project access cannot be obtained from the west or the south for this project. Access from Lone Oak Road would require upgrades to a local private road and would require offers of dedication from abutting residents. Takes of private property, combined with vegetation removal that would be required to use that access route, are not feasible given the availability of the legal access route. With regard to use of Cleveland Trail as the primary access, consideration of unnecessary take of private property also applies to that route. In addition, use of Cleveland Trail as primary access would require substantial upgrade to a route crossing Buena Creek Road and abutting oak woodland, with commensurate impacts to both riparian and woodland habitats that would exceed biological impacts resulting from implementation of the Proposed Project. Cleveland trail is being improved only to the level needed for emergency access/egress by emergency responders and residents, as approved by the Vista Fire Protection District and County Fire Services staff.

Potential impacts from alignment of extended Sugarbush Drive were carefully considered in the biological analysis for the project. The access road would not be a substantial barrier to wildlife using this site—it would be at grade and would only carry an anticipated 540 daily trips, and the proposed open space to the west of the access road would therefore continue to be biologically viable. In addition, it would be minimally fenced and slopes would be planted with native plant species. The only County-sensitive wildlife species noted on this site were coastal California gnatcatcher, red-shouldered hawk and turkey vulture. These species would not be significantly impacted by the placement of this private road. Edge and indirect effects overall (dust, human or pet incursion, invasive plant species, etc.) are addressed on pages 2.2-14 through 2.2-16, 2.2-19, 2.2-20 and 2.2-23 of the EIR. The current Project design is considered preferred (given the proposed road paved width, adjacent landscaping, lack of lighting along Sugarbush Drive between the existing Sugarbush Drive terminus and the proposed development bubble, etc.), and minimized edge effects resulting from clustering of the residential portion of the Project, rather than allowing access from the west given the constraints identified in the paragraph above.

G39. The primary goal of this comment was to lead the County to prepare an EIR. That has now occurred, so the comment may be considered moot. Please note, however, that the County disagrees that Project documentation says that the Project open space easement would connect to off-site open space. Similar to the prior MND, the Sugarbush EIR notes that Project design "would maintain connectivity of preserved habitats on site with regional connections to large off-site vacant lands to the east and south" (page 2.2-18 of the EIR).

There is no assertion that there is open space (understood as dedicated to the County or otherwise preserved) on adjoining parcels and that a large swath of unbroken open space habitat will be created, as if the Sugarbush project was the

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last piece of a larger open space puzzle. In fact, the Sugarbush project would be the first piece of an anticipated larger open space preserve system in this area.

The County cannot provide assurances that all contiguous undisturbed habitats off-site to the east and south will remain undisturbed in perpetuity (although the County can confirm that properties under County land use authority, such as the Tai property to the east, would require design supporting and extending the 500-foot buffer required in the Sugarbush design). Project-related impacts to Diegan coastal sage scrub would be mitigated at a 2:1 ratio via on-site preservation. Although not required as mitigation, an additional 20.2 acres of Diegan coastal sage scrub would be retained on site within dedicated open space as part of Project design. Impacts to off-site habitat areas will have to undergo environmental review, however, including making NCCP findings just as the Sugarbush Project has had to do. The need for this additional review of other projects is noted on page 2.2-19 of the EIR. Given that the Sugarbush Project would create a 75.7-acre biological preserve area, any projects proposed on adjacent lands will be required to meet findings for viable preserve design and connectivity with the Sugarbush preserve area. Therefore, it is reasonably anticipated that a substantial area of coastal sage scrub will remain undisturbed to the south and southeast of the project site comprising a future preserve system that will connect to the proposed on-site open space. Project impacts and mitigation, however, all would occur on the Sugarbush property. No reliance is placed on off-site actions relative to Project effects. No additional analysis is required.

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RESPONSES

Robert Hingtgen, County of San Diego
December 28, 2006
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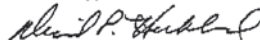
the southern part of the subdivision. Again, the project's potential negative impacts – including edge effects – on this water course are not discussed in the Initial Study/MND.

Project Traffic Impacts

It is our understanding that the County and applicant are currently revising the traffic study for this project. In this next iteration of the traffic analysis, please ensure that the impact study area extends westerly to the intersection of Buena Creek Road and South Santa Fe, and easterly beyond the intersection of Buena Creek and Deer Springs Road all the way to the Deer Springs/I-15 on-ramp. Anything less will be insufficient, and will cause the project's cumulative traffic impacts to be underreported. We would also like to see an update of the traffic control warrant study for the intersection of Sugarbush Drive and Buena Creek.

Thank you for your attention to these matters. Please feel free to call me if you have any questions regarding the contents of this letter.

Sincerely,


DAVID P. HUBBARD, ESQ.

cc: Lindsay Townley
Dave Root

G40. Impacts associated with CDFG and Corps jurisdictional areas are shown on Figure 2.2-5 of the EIR. As shown in this figure and as described in the text (pages 2.2-10 and 2.2-11), non-riparian vegetative impacts would occur to the ephemeral stream in the northern portion of the Project site; such impacts, although minimal (most of the drainage would be avoided), were determined to be significant. No other impacts would occur to CDFG and Corps jurisdictional areas. Mitigation for impacts to the above feature has been included in the EIR (pages 2.2-20 and 2.2-10), and would include removal of exotic plant species (enhancement) of the portion of the stream that would not be impacted by the Project. An additional drainage feature is located in the far southern portion of the Project site entirely within proposed open space area beyond the proposed six-foot fire wall on lots 11 and 33. This drainage lies slightly more than 200 feet southeast horizontally and approximately 65 feet lower in elevation from pads on proposed lots 11 and 33. There is no Project impact to this drainage. Vegetation along this drainage is classified as coastal sage – chaparral scrub, and Diegan coastal sage scrub.

G41. This comment pre-dates the current Project Traffic Impact Analysis (TIA). The current TIA includes the analysis of the intersections of Buena Creek Road/South Santa Fe Avenue and I-15 ramps/Deer Springs Road. Traffic signal warrants for Sugarbush Drive and Buena Creek Road are addressed on page 41 of the October 2009 TIA and on page 2 of the TIA Addendum dated February 25, 2010. The minimum peak hour volume for a signal at this intersection would be 75 trips on northbound Sugarbush Drive. The highest peak hour volume is used to determine whether the peak hour warrant is satisfied. The northbound volumes are higher than the southbound volumes on Sugarbush Drive during both peak hours. The TIA forecasts a maximum of 44 AM peak hour trips from northbound Sugarbush Drive to Buena Creek Road. The anticipated volumes have been corrected on page 2.4-9 of the EIR and the associated delay has been updated on Table 2.4-7. These volumes are substantially below volumes warranting a signal.

COMMENTS

RESPONSES

EXHIBIT 3

COMMENTS

RESPONSES

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELLORS AT LAW
EMERALD LAKE CORPORATE CENTRE
1525 PARADAY AVENUE, SUITE 100
CARLSBAD, CALIFORNIA 92008
TELEPHONE 760.431.9501
FACSIMILE 760.431.9512

OF COUNSEL
MICHAEL SCOTT GATZKE
ANTHONY T. DITTY

December 5, 2007
By Email and Overnight Mail

Robert Hingtgen
County Planner
Department of Planning and Land Use
County of San Diego
5201 Ruffin Road, Suite B
San Diego, CA 92123

Re: Sugarbush Residential Project – TM5295 (RPL No. 5)

Dear Mr. Hingtgen:

As you know, I represent residents and landowners in the Lone Oak and Sugarbush areas of the County with respect to the above-referenced project. Over the past eighteen months, I have submitted numerous letters to the County outlining my clients' objections to the project and identifying various defects and omissions in the environmental analyses so far conducted by County staff and the developer's consultants. It has been, and remains, our position that this project requires a full Environmental Impact Report ("EIR") and that the Initial Study/MND – even as revised by the most recent set of technical reports – still will not satisfy CEQA's minimum legal requirements. In part, this is because the MND still fails to provide full, accurate information on key impact categories. For example, it continues to mislead the public as to the actual size and quality of the proposed open space/biological mitigation area, significantly overstating what the County can actually deliver in terms of permanent, unfragmented habitat. In addition, as discussed below, no document so far prepared for this project complies with California Water Code §§ 10910, *et seq.* – the state statute which requires a complete water supply assessment for all new projects. The MND also includes no assessment of greenhouse gas emissions or the project's individual and cumulative contribution to climate change.

But these are not the only reasons why the MND is inadequate to serve as the CEQA document for this project. Ironically, the additional studies prepared for the MND, including and especially the updated Traffic Impact Analysis ("TIA"), provide new evidence that the project has the potential to create significant, unmitigated impacts. Under CEQA, such evidence requires the lead agency (the County) to prepare an EIR; the MND will no longer suffice. We are also surprised that the County has made no effort to revise the fire safety analysis and biological impacts assessment following the fires that devastated so much habitat and so many

G42. On-site lands that are proposed for dedication as open space to the County are required as mitigation for Project impacts to biological resources. Please refer to Response to Comment G39.

G43. Refer to Response to Comment G18.

G44. This comment pre-dates preparation of the DEIR and Global Climate Change Evaluation report (Appendix I). The topic of greenhouse gases (GHGs) is specifically addressed on pages 3.1-2 through 3.1-7, 3.1-14 and 15, and 3.1-17 of the EIR.

G45. An EIR has been prepared for the Proposed Project. No significant and unmitigated impacts (including traffic impacts) were determined to occur as a result of Project construction or implementation. All traffic impacts would be mitigated to below a level of significance. Please refer to Subchapter 2.4 of the EIR.

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homes, including homes located at the urban/wildlands interface – the very place where the Sugarbush project is proposed for construction.

My clients do not wish to deny the project applicant his right to build homes on the subject property. That right, however, should be exercised within the bounds of the County's current planning and zoning designations for the site, which require minimum lot sizes of two to four acres.¹ The problems with this project stem almost exclusively from the developer's desire to squeeze 45 housing units on a parcel of land which, environmentally speaking, can accommodate only 15. We therefore request that the County either (a) deny the project as presented and require the applicant to come back with a plan for no more than 15 homes, or (b) instruct the applicant and County staff to prepare a complete and compliant EIR for the current 45-unit proposal.

Before turning to substantive issues, I would like to raise an important procedural point. According to the County's public notice, the Department of Planning and Land Use ("DPLU") is circulating for public review only certain pages of the MND/Initial Study, along with the updated TIA and Fire Protection Study. This makes for a confusing, disjointed document for purposes of public review and comment – just what CEQA is designed to avoid. Given that the original MND/Initial Study is now more than two years old, the County should circulate the entire document – as revised and updated – to the public for its consideration.

The County's decision to restrict public review also fails to recognize that impact categories are not completely self-contained; they are sometimes porous and affect other impacts. For example, the updated TIA indicates that traffic conditions will be worse than originally anticipated. This fact tends to affect air quality, road safety, and noise impacts. Does the County intend to dismiss public comments submitted on these issues?

Finally, the County's public notice necessarily will persuade some members of the public to restrict their comments as instructed, even though CEQA allows members of the public to submit comments – on any topic implicated by the project – up to the point of project approval. See, Pub.Res.Code § 21177(a).² Thus, the County's effort to stifle public comment and constrain it to a few pages in the MND/Initial Study and to the updated traffic and fire protection studies operates to "chill" public participation in the CEQA process. The fact is, there are a host of problems with this project and the way it has been analyzed, many of which extend beyond the

¹ The current land use designation is Estate Residential, and the current zoning designation is A70 (Limited Agricultural).

² Public Resources Code § 21177(a) provides as follows: "No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (*Emphasis added*).

G46.Refer to Response to Comment G13 with regard to fire safety. The analysis has been revised in the EIR to require the Project Applicant to mitigate for unauthorized brush clearing completed by neighboring residents and to clarify the acreage required for these impacts/mitigation. Given each of these considerations, the existing biological resources impacts assessment is adequate with regard to this issue. No additional analysis is required.

G47.Please refer to Response to Comment G1 and G29.

G48.Comment noted. Consistent with the comment, an EIR has been prepared for the Project.

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narrow confines established by the County in the latest public notice. The public should be allowed to comment on each and every one of them.

Substantive Issues

1. Fire Safety. As indicated in previous comment letters, my clients are concerned about the fire safety impacts of the proposed project. It is not so much that the additional homes create an added fire risk, but that they, along with future residences planned for adjacent properties, will affect the ability of existing homeowners to escape should a fire occur. The possibility of a devastating and deadly fire is no longer hypothetical. In 2003 and again this past October, wildfires of unprecedented intensity ravaged the entire county, especially those portions of it where residential areas back up to open space – the so-called “urban/wildlands interface.” It is amazing that the County, in the immediate wake of the worst fire on record, is treating this project as if nothing had happened, as if the Witch Fire and Rice Fire had never occurred. It is time for a paradigm shift within DPLU and the Fire Protection District – one driven by the hard lessons of the 2003 and 2007 fires. New homes should not be placed in areas prone to, or with the potential for, wildfire. We cannot – and therefore, should not – rely on reverse 911 alerts and “shelter-in-place” practices to ensure that existing homeowners will be safe when the next big fire comes. We know already that such practices, while certainly an improvement over older methods, do not work in all cases. We must not repeat mistakes or continue implementing misguided policies. This means, at the very least, that the County should reserve judgment on the fire safety impacts of this project until the state and local fire protection authorities have completed their investigation into the October fires. Only after that investigation is finished will the County and the public be in a position to determine whether this project will significantly reduce the margin of fire safety required for existing and future residents.

2. Biology Impacts. In prior comment letters, we have criticized the County for failing to impose real mitigation measures on the applicant for the project's destruction of approximately 23.1 acres of Diegan Coastal Sage Scrub (CSS) – habitat which the biologists tell us is actually occupied by a nesting pair of California gnatcatchers. Rather than compensate for this loss by restoring (or establishing) a like amount of CSS at the project site or elsewhere, the applicant is merely agreeing not to disturb the remaining CSS on the property. While such avoidance should certainly be required, it hardly accounts for the 23.1 acres that have been lost.

To complicate matters further, there is some question as to whether the assumptions that underlie the County's mitigation approach remain valid. One of the “marketing” points for this project – at least from a biology perspective – was that the CSS preserved on-site would be forever connected to contiguous open space areas to the east and south that also contain CSS. Records maintained by the County and the U.S. Fish & Wildlife Service (FWS), however, show that this large open space area to the south and east is subject to

G49. Refer to Response to Comment G13. The Project no longer proposes emergency access through the Lone Oak Lane neighborhood to the west. Emergency access is proposed via Cleveland Trail to Buena Creek Road. The County disagrees with the statement that the County is treating this Project as if nothing had happened in the wake of the recent October 2007 wildfires. Since the Cedar Fire in 2003, the County has required all projects in the Wildland-Urban Interface to develop Fire Protection Plans (FPPs) that must be approved by the local fire jurisdiction with concurrence from the County. The Project has developed an FPP which has been approved by the VFPD with concurrence from the County.

It is also anticipated that the existing Lone Oak Lane neighborhood would realize improved safety related to wildfire as a result of the Project. Wildfires can be expected to be driven by winds from the east, when Santa Ana conditions exist. The Lone Oak Lane neighborhood currently has minimal fire buffer between existing homes and the undeveloped Project site. Development of the Proposed Project on property east of the Lone Oak Lane neighborhood, in conformance with the approved FPP, would serve to buffer that neighborhood from wildland fires starting east of the Project. Please also note that an After Action Report was prepared by CalFire and the County Office of Emergency Services in 2004 following the Cedar and Paradise fires of October 2003. The Proposed Project would conform to recommendations from that report and to new state fire and building codes, which became effective January 1, 2008, according to Ralph Steinhoff, San Diego County Fire Services Coordinator. Furthermore, the evacuation of approximately 500,000 citizens during the October 2007 wildfires was regarded as highly successful, and homes built in accordance with the latest building code standards since the 2003 wildfires fared very well in 2007.

G50. Please refer to Response to Comment G9.

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the development rights of the neighboring property owners (e.g., Tai), some of whom have already submitted development proposals that would fragment the habitat in question. This would obviously defeat the purported benefits credited to the Sugarbush "mitigation" plan. Despite these facts, this issue is not analyzed or disclosed in the original MND or the revised version. As a result, the County has failed to comply with CEQA.

The MND also fails to update its analysis of the project's cumulative impacts on CSS and other biological resources. The October 2007 fires burned hundreds of thousands of acres of sensitive habitat. The extent to which these losses will be long-term or permanent is now being studied by local as well as state and federal wildlife agencies. The proposed project will simply exacerbate the damage done by the fires. Before approving the proposed project and allowing the developer to destroy 23.1 acres of CSS, the County should either (a) demand that the developer restore or establish anew those 23.1 acres at a 3:1 ratio, or (b) defer a final decision on the project until the investigation into the biological impacts of the October 2007 fires is completed. To move forward now would be to create a "fair argument" that the project will have significant biological impacts, which alone is enough to require an EIR.

Finally, documents maintained by the County depict a blue-line stream in the southwest portion of the project site, where it may be affected by the project. This same stream is mentioned in the comment letter submitted by the FWS a few years ago. Nevertheless, the MND/Initial study does not discuss it or the potential impacts it may receive as a result of the project. We suggest strongly that the County inspect the stream in question to determine whether it falls under the jurisdiction of the Army Corps of Engineers, the California Department of Fish and Game, or both.

3. Water Supply. The original MND/Initial Study, dated December 15, 2005, dedicates only three sentences to the project's impacts on water supply:

"The project requires water service from the Vista Irrigation District. A Service Availability Letter from the Vista Irrigation District has been provided, indicating adequate water resources and entitlements are available to serve the requested water resources. Therefore, the project will have sufficient water supplies available to serve the project." (Initial Study, at p. 50)

Ironically, in the two years since the County included that paragraph in the MND/Initial Study, the VID has twice come so close to running out of water that it threatened to shut down service district-wide. Obviously, the "will-serve" letter obtained from VID in 2005 was overly optimistic about the district's ability to provide water to new development. VID currently has great difficulty serving the homes and business that already exist; that situation is likely to get

G51. Please refer to Response to Comment G39 regarding off-site undeveloped space. The Tai Estates Residential Subdivision (TM5409) is the only currently proposed project that would potentially impact coastal sage scrub southeast of the Project site. TM 5409 is 46.87 acres and has been redesigned from 12 to 6 proposed residential lots and approximately 25 acres of open space. To date, however, that project has not been able to demonstrate compliance with the HLP ordinance and make required HLP findings adequate to allow it to continue processing.

G52. The October 2007 wildfires burned approximately 300,000 acres of various habitats including approximately 71,000 acres of coastal sage scrub habitat. This habitat has evolved with and adapted to periodic wildfire, so that it is generally recognized that it will recover from fire without substantial management. Neither the Project, nor any project within the cumulative study area for the Project, burned in the October 2007 wildfires. In the U.S. Fish and Wildlife Service's final rule concerning the Revised Designation of Critical Habitat for the Coastal California Gnatcatcher (50 CFR Part 17, Federal Register, Volume 72, No. 243, Wednesday, December 19, 2007), the agency reiterated that coastal sage scrub is a fire-adapted habitat and they did not remove areas from the final designation of critical habitat that were burned in the wildfires of 2003 and 2007. Furthermore, the Project site is located approximately 9 miles north and 11 miles west of the burn perimeter of the Witch Fire, and 14 miles south and southwest of the Rice and Poomacha Fires, respectively. Cumulative impact analysis for biological resources begins on page 2.2-17 of the DEIR.

G53. Please refer to Response to Comment G40.

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worse with new development. How much worse is hard to tell, since the MND/Initial Study provides no information as to how much water the proposed project will consume. Nor does it include a cumulative water demand analysis disclosing the water use impacts of the project coupled with those of other existing and planned projects.

Such water supply "assessments" are now required in all CEQA documents pursuant to California Water Code § 10910, as amended in 2001 by Senate Bill 901. San Diego County, by virtue of special language included in Water Code § 10915, has been permitted to meet the requirements of the statute by adopting a regional growth management plan that has a water supply element which is consonant with the intent and purposes of Section 10910. In other words, San Diego County has elected to comply with Section 10910 through a different mechanism and the legislature has allowed it to do so. However, San Diego County has not been exempted from the statute or its data gathering requirements. This is made clear in Section 10915(g), which provides that the Office of Planning and Research ("OPR") will give the County a "pass" only if "[t]he environmental documents for a project located in the County of San Diego include information that accomplishes the same purpose of a water supply assessment that is prepared pursuant to Section 10910."

As of today's date, no document prepared for this project or incorporated into the MND satisfies Section 10915(g) or Section 10910. The "will-serve" letter does not cut it. As a result, OPR will not be able to make the compliance findings required under Section 10915. This alone constitutes a potentially significant, unmitigable impact. Therefore, an EIR is required for the project.

4. Traffic and Road Safety. The updated TIA includes revelations as to the cumulative traffic impacts of the proposed project. Whereas before the public were told that the project's traffic impacts would be insignificant even on a cumulative basis, the new TIA tells a different story. The updated traffic data now show that project-related traffic, when added to anticipated congestion levels, will result in unacceptable levels of service (LOS E or F) at a variety of road segments and intersections. Specifically, the TIA, at pages 30 and 31, identifies eight intersections and seven road segments that will operate at LOS E or worse under "cumulative" traffic conditions.³ Such failing levels of service are considered significant impacts.

The TIA does suggest some traffic mitigation measures, but even these address only five of the eight "failing" intersections and only five of the seven "failing" road segments. Thus, the cumulative impacts at three intersections and two road segments remain significant and unmitigated. On this basis alone, the MND is not adequate to serve as the CEQA document for this project. An EIR must be prepared.

³ The TIA defines such conditions as those anticipated to occur when project traffic levels are added to (1) existing traffic and (2) the traffic generated by other projects that are expected to be built in the near future.

G54. The statement that VID has come close to running out of water and threatened to shut down service district-wide is not true per a phone conversation with Brian Smith, Assistant Chief Engineer with VID. Water supply information is presented in the DEIR on pages 3.2-11 and 3.2-12. A Water Supply Assessment is not required for the project because it does not reach the threshold for such analysis pursuant to California Water Code Section 10912.

G55. This comment pre-dated the current TIA (dated July 2009) and EIR. The TIA and EIR identify seven intersections that would operate at LOS E or F with the addition of traffic associated with cumulative projects. These reports also state that eight street segments in the Project area are projected to continue to operate at LOS E or F with the addition of traffic associated with cumulative projects. Significant direct impacts are identified to two road segments and one intersection, and significant cumulative impacts are identified to eight road segments and seven intersections. Previous iterations of analysis had identified the same or similar significant impacts.

G56. Mitigation is proposed for all impacts associated with roadway segments and intersections. Please refer to M-TR-1 through M-TR-5 on pages 2.4-10 through 2.4-12 of the DEIR. These mitigation measures would mitigate all direct Project-related effects to roadway segments and intersections (through improvement to an acceptable LOS) to below a level of significance. Cumulative impacts would be mitigated through fair-share contributions (i.e., participation in the County's TIF Program, City of San Marcos Public Facilities Financing fee program [see Appendix G-5 of the Traffic Impact Analysis], or fair-share contribution to planned City of Vista improvements [see Appendix G-3 of the Traffic Impact Analysis]) or, alternatively, through direct completion of selected intersection improvements.

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Two additional criticisms of the TIA: First, it does not seem to have accounted for traffic increases along Buena Creek to and from the proposed Sprinter train station on South Santa Fe. If the Sprinter ridership projections are correct, one can expect a fair number of commuters to avoid the congestion on I-15 by driving to the Sprinter station via Buena Creek; yet this additional morning and afternoon peak traffic is not discussed in the TIA. Second, the TIA indicates on page 30 that the intersection at Buena Creek and Sugarbush – the intersection most affected by the project – will operate in the future at LOS E during the morning peak and LOS F during the evening peak. Yet, inexplicably, the TIA indicates that the level of congestion at this intersection does not warrant a traffic signal to improve traffic flow and ensure driver safety. (See, TIA at p. 31). This nonsensical conclusion might be forgiven if the TIA were recommending other forms of mitigation at this intersection; but it makes no such recommendation. The significant impacts at the Buena Creek/Sugarbush intersection are among those for which no mitigation is offered. Therefore, this impact remains significant.

Conclusion

The piecemeal distribution of select portions of the project MND is misguided and serves not to inform members of the public but to confuse them. As stated in my previous comment letters, each of which is incorporated by this reference, this project requires an EIR to fully assess and disclose the true impacts of the proposed subdivision and offer feasible alternatives to the design presented by the applicant. For a variety of impact categories – biology, water quality, air quality, traffic, water supply, fire safety, aesthetics, community character – the record provides evidence that this project will cause significant, unmitigated impacts. Some of these impacts are discussed in the MND/Initial Study. Some are not. In either case, however, there is a clear need for an EIR. It is what CEQA demands and the public deserves.

Thank you for your attention to these matters. Please feel free to call me if you have any questions regarding the contents of this letter.

Sincerely,


DAVID P. HUBBARD, ESQ.

cc: Lindsay Townley
Dave Root

G57. Traffic counts updated in July 2008 and March 2009 were used as the basis for the updated TIA. The Sprinter began revenue operations in March 2008; the updated traffic counts therefore include traffic associated with the Sprinter. Any changes to projected Sprinter-related traffic in the future is accounted for in the Year 2030 SANDAG model, which forms the basis for the long-term cumulative impact analysis. Thus, short- and long-term traffic associated with the Sprinter are properly accounted for in the TIA.

G58. The County does not agree that no mitigation is proposed. As shown on Table 2.4-7 of the EIR, the intersection of Buena Creek Road/Sugarbush Drive would operate at LOS F during the PM peak hour with the addition of traffic from the Proposed Project and all cumulative projects (a significant cumulative impact). Mitigation would include provision of a 150-foot long westbound left-turn lane (with 120-foot bay taper) on Buena Creek Road/Sugarbush Drive. The provision of the westbound turn lane on Buena Creek Road at Sugarbush Drive will improve operations at this intersection by allowing left-turning vehicles to turn onto Sugarbush Drive without impeding westbound thru traffic on Buena Creek Road. Without this lane, both existing and future left turn vehicles would need to stop within the Buena Creek Road westbound thru lane and wait for a gap in eastbound traffic. This increases the delay for westbound thru traffic and is an undesirable operational situation which the project mitigation measure rectifies. The provision of the left-turn lane, in addition to the payment of the County TIF, mitigates the impact to below a level of significance.

Please refer to Response to Comment G41 regarding signal warrants.

COMMENTS

RESPONSES

EXHIBIT 4

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW

EMERALD LAKE CORPORATE CENTRE

1825 PARADISE AVENUE, SUITE 150

CARLSBAD, CALIFORNIA 92008

TELEPHONE 760.431.2501

FACSIMILE 760.431.2512

OF COUNSEL

MICHAEL SCOTT GATZKE

ANTHONY T. DIVY

October 7, 2008

Via first class mail

Robert Hingtgen, Project Planner
 County of San Diego
 Department of Planning and Land Use
 5201 Ruffin Road, Suite B
 San Diego, CA 92123-1666

Re: Case Number 03-003; Project Name: Sugarbush

Dear Mr. Hingtgen:

My clients recently reviewed the file for the above-referenced project ("Sugarbush") and found a letter from you, dated June 30, 2008, to Rod Bradley of BHA, informing him of recent changes to the County's Watershed Protection Ordinance (WPO). According to your letter, the WPO amendments could affect Sugarbush, in that they require all projects — regardless of where they are in the entitlement pipeline — to use Low Impact Development (LID) planning and stormwater management techniques. These, we understand, are designed to maximize infiltration, provide retention, retard runoff, minimize impervious surfaces on the project site, and direct runoff from impervious surfaces to landscaped areas. The letter indicates that Mr. Bradley must adjust his plans to include, at a minimum, the following four LID requirements: (1) disconnect impervious surfaces, (2) design impervious surfaces to drain into properly designed pervious areas, (3) use pervious surfaces wherever appropriate, and (4) implement site design Best Management Practices (BMPs).

My question to you is this: Has Mr. Bradley (or anyone else representing the project applicant) provided you with new drawings, plans, or other documents demonstrating that he has complied with the directives set forth in your letter of June 30, 2008? If so, please identify those documents and let me know when they will be placed in the project file for public inspection. If not, I would like to know when you expect to receive new, compliant drawings. I am also curious to know if, in your opinion, the plan adjustments required under the amended WPO will prompt corresponding changes in the EIR for the project.

G59. This comment pre-dates the current Project design relative to LID stormwater planning. The revised plans (including the new detention/bioretenention facilities) are addressed throughout the EIR. Potential impacts to hydrology and storm water quality, and compliance with stormwater runoff requirements (including LID requirements) are addressed in Chapters 3.1.3 and 3.2.4, and Appendices J and K of the EIR.

COMMENTS

RESPONSES

GATZKE DILLON & BALLANCE LLP

Robert Hingtgen, Project Planner
October 7, 2008
Page 2

Thank you for taking the time to respond to my inquiries.

Sincerely,



David P Hubbard
of
Gatzke Dillon & Ballance LLP

DPH:rlf

cc: Lindsay Townley
Susan Ameson

COMMENTS

RESPONSES

EXHIBIT 5

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW

EMERALD LAKE CORPORATE CENTRE

1525 PARADAY AVENUE, SUITE 150

CARLSBAD, CALIFORNIA 92008

TELEPHONE 760.431.8501

FACSIMILE 760.431.8512

OF COUNSEL

MICHAEL SCOTT GATZKE

ANTHONY T. DITTY

November 20, 2008

Via Email and Fax

Robert Hingtgen, Planner III
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

Re: *Sugarbush Residential Development (GPA 05-010; SP03-003; R04-008;
TM 5295RRPL; Log No. 02-08-047) – Comments on Recirculated
Portions of Mitigated Negative Declaration*

Dear Mr. Hingtgen:

I represent residents who live on Lone Oak Lane, Lone Oak Road, and Sugarbush Drive. On behalf of these residents, I have commented on the above-referenced project and Mitigated Negative Declaration (MND) on at least five other occasions. This comment letter will focus on those portions of the MND that were recently altered and recirculated for public review. Note, however, that my comments today build off of those previously submitted and therefore incorporate all past comments by this reference.

At the outset, DPLU's decision to recirculate only excerpts of the MND and Initial Study (collectively, the "MND") creates significant problems for the public reader hoping to make sense of the new changes to the project and environmental analysis. All context is lost, and one is left to wonder exactly how the latest adjustments reverberate throughout the remainder of the document. For the reason, DPLU must recirculate the MND once more – this time with the entire document available for review. Note that this is not just my opinion or the opinion of my clients. The Twin Oaks Valley Sponsor Group has taken a similar position on DPLU's unusual "recirculation" process. In addition, the public should be given to at least January 13, 2009 to review the *entire* MND, as amended. This will enable interested persons to comment on the document without being rushed to do so during the Thanksgiving, Christmas, and New Years holidays.

GATZKE DILLON & BALLANCE LLP

Robert Hingtgen
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As I understand it, most of the recent textual changes relate to mitigation measures for (1) the Project's direct and cumulative traffic impacts, (2) the Project's impacts on stormwater, and (3) Project's impacts on emergency ingress and egress. I will limit most of my comments to these issues; however, two additional topics should also be addressed by DPLU prior to Planning Commission review of the MND. First, the water supply situation in California generally and in Southern California in particular grows more dire by the day. Apart from recent Federal Court rulings dramatically limiting the amount of water to be pumped southward from the Sacramento Delta – water which the Los Angeles Metropolitan Water District then sells to water agencies such as the Vista Irrigation Department – the Governor himself has stated in recent weeks that water rationing is a near certainty by the summer of 2009. DPLU cannot ignore this problem; nor cannot it somehow remove this project from this discussion about how to deal with it. The fact is, we do not have enough water to safely and adequately serve *existing* residences and businesses. Adding more houses to existing demand simply places more strain on current water supplies – supplies which continue to dwindle due to seven years of drought. This is a potentially significant impact that the MND is not equipped to evaluate. An EIR must be prepared.

Then there is the issue of this Project's contribution to the glut of homes that continues to damage San Diego County's real estate market. It is no secret that there are currently far more homes in the County than there are buyers. The proposed Project will only add to this problem. We fear that the project applicant, if successful in winning County approval, may not have the financial resources necessary to complete the Project once begun. We also fear that, even if the Project is completed, many of the new homes will remain vacant, inviting vandals, graffiti, etc. In both cases, the economic effects of putting new homes into an already-flooded housing market will have real physical impacts – namely, visual blight and damage to community character. These effects, too, must be evaluated in an EIR, as they are potentially significant. Moreover, they exacerbate the Project's already-significant impacts on community character – *i.e.*, those created by the Project's waffle-iron grid pattern, "clustered" neighborhood concept, and cookie-cutter home designs. None of these Project "features" is consistent with the existing community, which is rural in character and consists of custom homes on large, uniquely configured lots.

With respect to traffic mitigation, it appears that the MND has deleted a number of specific road improvement measures and simply imposed "fair share" traffic fee contributions in their place. First, I would point out that participation in traffic improvement programs, while potentially acceptable as mitigation for *cumulative* traffic impacts, is not sufficient as mitigation for *direct* traffic impacts. Second and most important, neither the MND nor the Traffic Impact Analysis (TIA) prepared by Linscott, Law, and Greenspan demonstrates that the proposed

G60. Refer to Responses to Comments G18 and G54. Also, consistent with the comment, an EIR has now been prepared.

G61. The commentator's opinion that the Proposed Project would contribute to the glut of homes currently on the real estate market is speculative. In the recent past, it seemed there were not enough homes to supply the number of buyers. Evaluating the cyclical nature of the real estate market is outside the scope of CEQA. It is anticipated that the homes would be built on the Project site when market conditions are favorable. The comment provides no examples of physical changes in the community due to the current reported "glut" of homes.

G62. Please refer to Response to Comment G6 and G36.

G63. The County agrees that fair-share contributions do not comprise acceptable mitigation for significant direct traffic impacts and the project does not propose fair-share contributions as mitigation for significant direct impacts. Chapter 2.4.5 of the EIR describes all proposed mitigation measures for both direct and cumulative traffic impacts.

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mitigation measures, individually or collectively, will successfully reduce the Project's traffic impacts to below the level of significance.

Consider the following examples:

- Buena Creek Rd / S. Santa Fe Ave: According to Table 9-1 of the TIA, the intersection at Buena Creek Road and South Santa Fe Avenue operates at LOS E in the morning peak hour and LOS F in the evening peak hour. Table 9-1 also indicates that the Project alone will cause 4.2 seconds of delay to this intersection in the morning and more than 10 seconds of delay in the evening. Under the County's significance criteria, a 2 second delay is considered significant for LOS E intersections and a 1 second delay is considered significant for LOS F intersections. (TIA, Table 5-2, p. 13). Given these facts, the County must demonstrate that the mitigation measures it has imposed will reduce Project-induced delay at the Buena Creek / Santa Fe intersection by at least 2.2 seconds in the morning and 8 seconds in the evening. Inexplicably, however, the TIA provides no data whatever showing that these delay reductions can be achieved with the mitigation measures proposed. As a result, the congestion impacts at this intersection remain potentially significant and an EIR must be prepared to address them.
- Buena Creek Rd / Monte Vista Dr: The intersection at Buena Creek Road and Monte Vista is unsignalized; instead, it is controlled by a three-way stop sign. The TIA identifies this intersection as one that operates at LOS E with "critical movement" – i.e., subject to excessive queues. (See, TIA Table 5-2 and Table 9-1). As such, any Project-related impact that causes more than 2 seconds of delay or places more than 20 peak hour trips at this intersection is significant, as determined by the County's significance criteria. (See, TIA Table 5-2). According to the TIA, the Project will (1) increase delay by 5.4 seconds, (2) add 16 trips westbound in the morning peak, 8 trips westbound in the evening, and (3) add 7 trips eastbound in the morning peak, 21 trips eastbound in the evening. (See, TIA, Table 9-1 and Figure 7-2). In all cases, these impacts qualify as significant under the County's criteria. Again, however, there is no evidence in the MND or the TIA that the proposed mitigation measures will reduce these Project-related impacts to below the level of significance. Therefore, these impacts remain potentially significant and an EIR must be prepared.
- Santa Fe Avenue (Robelini to Buena Creek): The TIA indicates that this segment of Santa Fe Avenue is a rural collector road with two-lanes (one in each direction) which

G64. The County does not agree with this comment. Refer to Responses to Comments G65 through G68, below. Refer also to EIR pages 2.1-12 and 2.1-13, which demonstrate that significant impacts to traffic, both direct and cumulative, would be mitigated to less than significant levels.

G65. The comment was written in November 2008 which is prior to preparation of the current TIA dated July 2009. Table 9-1 in the July 2009 TIA identifies no existing or future LOS deficiencies at the Buena Creek Road/South Santa Fe Avenue intersection. Therefore, the proposed project results in no direct or cumulative impacts and no mitigation measures are required.

G66. A significant direct impact from the project has been identified at the intersection of Buena Creek Road/Monte Vista Drive and require mitigation. To mitigate the direct impact to this intersection, the Project proposes to complete intersection improvements (M-TR-2). The Project Applicant would provide a dedicated right-turn lane on Buena Creek Road at Monte Vista Drive to the satisfaction of the County of San Diego. Improvements to the Buena Creek Road/Monte Vista Drive intersection would reduce overall intersection delay (wait time), resulting in improved intersection LOS. As noted on page 2.4-12 of the EIR, the proposed improvements would allow the intersection to operate at acceptable levels, thereby appropriately mitigating the impact. Specifically, Table 2.4-11 of the EIR indicates that the LOS at this intersection would improve from LOS E to LOS D with the proposed improvements.

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currently operates at LOS F. (TIA, p.3; TIA, Table 9-2).¹ The Project, by itself, will add 240 trips to this segment, which is more than double the 100 trips allowed under the County's significance criteria. (TIA, Table 5-1). The County's MND must demonstrate that the mitigation measures it has proposed will actually reduce this impact to below the level of significance. The MND fails to do so; nor does the TIA fill this gap in the data. The public need not accept -- and CEQA does not sanction -- bald assurances that mitigation will be successful. The effectiveness of the proposed mitigation measures must be proved. Otherwise, the MND will not suffice and an EIR must be prepared.

- Robelini Drive (S. Santa Fe to University Dr.): The mitigation analysis of this segment suffers the same flaws that plague the mitigation analysis of the Santa Fe Avenue segment discussed immediately above. Robelini Drive, between South Santa Fe and University, currently operates at LOS F and the Project alone will add 240 new trips to this already-congested condition. (TIA, Table 9-2). Yet neither the MND nor the TIA demonstrates that the proposed mitigation measures will successfully reduce impacts on this segment to below the level of significance. As a result, the MND is not adequate to its purpose and an EIR must be prepared.

We also note that there are defects in the County's assessment of the Project's cumulative traffic impacts. For example, the list of cumulative projects, set forth in Table 8-1 fails to account for the County's recent approval of the National Quarries mining expansion, which will enlarge the mine operations from approximately 30 acres to more than 200 acres, with significant increases in truck-haul trips down North Twin Oaks Valley Road, onto Deer Springs Road, and then on to I-15 and points distant. This is a potentially huge impact that has not been added to the cumulative ledger. Likewise, TIA Table 8-1 fails to include the recently-approved Frida's Hill project, which is immediately adjacent to the proposed Sugarbush Project.

In addition, it appears that the TIA is outdated. It does not appear to take into account traffic congestion resulting from the Sprinter rail crossings at Santa Fe Avenue. Nor does it include traffic from expanded local commercial operations, all of which add trips to Buena Creek Road. The TIA also fails to include traffic from Ora Avo, Hollyberry, and/or Lone Oak Road.

One last point relating to traffic: According to the site map, an existing road easement bisects the proposed open space area and, if improved as an actual road, would connect planned development east of the Project (Tai Estates and potentially Freda's Hill and the Tomlinson

¹ The TIA does not state whether this condition exists at the AM peak or the PM peak, or both.

G67. A significant direct impact has been identified for South Santa Fe Avenue between Robelini Drive and Buena Creek Road, and for Robelini Drive between South Santa Fe and University. To mitigate direct impacts to these two roadway segments the Project proposes to complete improvements to the South Santa Fe Avenue/Robelini Drive intersection (M TR 1). Doubling of the northbound right-turn length on Robelini Drive would reduce delays at the intersection and, in turn, decrease the travel time along the adjacent roadway segments. This reduction in travel time was verified by conducting an arterial analysis, which determines the average speed on the subject segment. Table 2.4-10 summarizes the calculations for the two applicable roadway segments. As seen in the tables, the travel time on the subject segments would be less with the Proposed Project traffic and intersection improvements than under existing conditions. The Project's impacts to these road segments would, therefore, be mitigated to below a level of significance with the implementation of the recommended intersection mitigation measures.

G68. Please refer to Response to Comment G67.

G69. The County did not recently approve the National Quarries mining expansion. The operator of that facility expanded its operations several years ago, and in litigation between the County and the operator, the Superior Court determined in 2007 that such expansion was an integral part of the business, to which the operator had a vested right. A relatively recent action by the County, was a September 2008 approval of a Reclamation Plan for the facility, as required by state law. The Reclamation Plan did not authorize any additional vehicle trips, and only addressed reclamation of the site. The National Quarries project would not generate additional traffic (refer to Table 2.4-8 item 22).

G70. Fredas Hill is included in the cumulative traffic analysis (refer to Table 2.4-8 item 66).

G71. Refer to Response to Comment G57.

G72. The comment does not specify what expansion to local commercial operations may have occurred. The TIA included a cumulative analysis of past, present and future probable projects (one of the methods allowed by CEQA Section 15130(b) (1)(A)). Road segment volume counts were updated in March 2009. Some counts conducted in July 2008 also were used. These latter summer counts were "factored up" as explained in Section 3.2.1 of the TIA and page 2.4-2 of the EIR. These are recent counts that would have accounted for traffic on Buena Creek Road coming from Ora Avo, Hollyberry, and Lone Oak Road. No Project traffic has been forecasted to utilize these three roadways.

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G73 (cont.) project as well)² to the proposed extension of Sugarbush Drive. Clearly, the intent is for this easement to provide ingress and egress to Tai Estates (and perhaps to Freda's Hill and the Tomlinson projects), thus adding traffic to Sugarbush. Nothing in the MND or the TIA indicates that this impact was taken into account.

G74 With respect to stormwater impacts, we remain unconvinced that run-off from the Project will be controlled sufficiently to mitigate potentially significant impacts on Buena Creek and downstream water bodies, including Agua Hedionda Lagoon. That DPLU has now elected to delete mitigation measure No. 21 only adds to our concerns, as this mitigation measure was expressly designed to ensure that the Project's erosion control and desilting facilities are designed properly.

G75 Finally, we disagree with the DPLU's decision to reduce the width of the proposed emergency access road (through Lot F, from Cleveland Trail to Street "A") from 32 feet to 28 feet, with an improved width of 24 feet. According to MND, this change is being made on the assumption that no more than 100 cars will use this road at any one time. This is an unwise and potentially life-threatening assumption. During an emergency, which can happen at any time day or night, the County should anticipate that every person living in the proposed Project will be attempting to leave the subdivision at the same time. Given that many households have three or more drivers, the number of vehicles on the emergency access road will exceed 100. And this does not even account for vehicles using this same road to escape from Tai Estates, the Tomlinson parcels, Freda's Hill, and other projects; nor does it account for emergency vehicles attempting to enter the subdivision to suppress a fire or confront any other catastrophic event, such as an earthquake. The MND provides no analysis of this potentiality. As a result it is inadequate.

In conclusion, no matter how many times DPLU and the applicant adjust the MND or massage its impacts analysis, the brute fact remains that the Project will likely cause significant impacts on the environment which have not been sufficiently mitigated. We have demonstrated this repeatedly in our various comment letters. With respect to the recently recirculated materials, the proposed changes do not provide evidence that the Project's impacts have been reduced to below the level of significance. Indeed, even by the County's own criteria, the Project's impacts – including those relating to traffic – remain significant. The County has no choice in the matter: under CEQA, it must prepare an EIR. As we have pointed out in the past, the problem with this Project is that the owner/applicant is not satisfied with the existing zoning.

² We note that the applicant for the Tomlinson project, like the applicant for Sugarbush, has requested a re-zone of his property to allow higher density development. This is precisely the "cascading" effect we feared would happen if the County began to entertain re-zone requests in this area.

G73. The road easement referred to in the comment would provide access to the Tai Estates project (TM5409). Although not proposed by the Sugarbush Project, this is the legal access for the Tai project, and must be retained by the Sugarbush Project Applicant. The TIA assumed potential development of 13 lots (this has since been lowered to 6), rendering this a conservative assessment (see Table 2.4-8 of the EIR). Trips associated with those homes were factored into cumulative conditions for Sugarbush Drive. The TIA Addendum dated February 25, 2010 factors these trips into the analysis of the intersection of Sugarbush Drive with Buena Creek Road. The Sugarbush project does not provide any access for the Fredas Hill project. That project has been approved and takes access from Buena Creek Road via Fredas Hill Road. An application for Plan Amendment Authorization (PAA 08-007) has been submitted to DPLU for property owned by Margaret Tomlinson 0.25 mile northeast of the Sugarbush Project on the opposite side of Buena Creek Road, and environmental review is underway. That project would not require any access through the Sugarbush site as it is located on the opposite side of Buena Creek Road and to the east of Sugarbush Drive.

G74. This comment pre-dates the recent Low Impact Design (LID) modifications that are incorporated into the EIR. Please refer to Response to Comment G37.

G75. The graded width requirement of the emergency access road was reduced from 32 to 28 feet, because that is adequate to support the improved roadway width within the 30-foot wide easement. The improved roadway width requirement of 24 feet remains the same. The revision was not made on the assumption that no more than 100 cars would use the roadway at any one time. That number of cars is the basis for the road design when used as a normal, full-time accessible roadway, not as an emergency access road. It is possible that more than 100 vehicles might have to exit from the Project site on this roadway during some emergency, but this is anticipated to occur in only extremely rare circumstances, and regular use of this roadway would not occur. The emergency access road improvement requirements have been approved by the County and VFPD.

COMMENTS

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He apparently feels that he cannot make enough money with the current zoning in place, an epiphany which, if true, should have occurred to him at the time he bought the property. The County should remain faithful to the existing and applicable General Plan and Zoning Code and demand that the applicant submit a project that is consistent with each.

Sincerely,



David P Hubbard
of
Gatzke Dillon & Ballance LLP

DPH:rif

COMMENTS

RESPONSES

EXHIBIT 6

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW

EMERALD LAKE CORPORATE CENTRE

1625 PARADAY AVENUE, SUITE 160

CARLEBAD, CALIFORNIA 92008

TELEPHONE 760.431.8501

FACSIMILE 760.431.9512

OF COUNSEL

MICHAEL SCOTT GATZKE

ANTHONY T. DITTY

April 30, 2009

Via first class mail

Robert Hingtgen, Project Planner
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, CA 92123-1666

Re: *Comments on Notice of Preparation for Sugarbush Residential Project*
(GPA 05-010, SP 03-003, R04-008, TM5295RPL, S04-015; Env. Rev. No. 02-08-047)

Dear Mr. Hingtgen:

I represent Lindsay Townley, Susan Arneson, Dave Root, and other residents in the Sugarbush/Lone Oak area of San Diego County with respect to the Sugarbush Residential Project (the "Project"). Since December 15, 2005, when the Mitigated Negative Declaration (MND) for the Project was first released to the public, I have submitted numerous comment letters to the County Department of Planning and Land Use (DPLU) identifying potential environmental impacts of the Project that require study in an Environmental Impact Report (EIR). I have augmented those comments by testifying before the County Planning Commission and bringing to light flaws and omissions in DPLU's assessment of the Project's environmental effects. The County has now determined that an EIR is, in fact, required to properly assess the potential impacts of the Project. This is a hopeful sign. For purposes of this NOP, however, it does not make sense for me to repeat points already made in greater detail elsewhere. Therefore, in the interest of economy, I will simply incorporate my former comments by this reference and request that DPLU consult them as part of the NOP process for this Project.

That said, however, there is one topic which, until this NOP was issued, was not ripe for discussion but now must be addressed: Project alternatives. As the staff at DPLU knows, the proposed EIR must evaluate a reasonable range of alternatives which, if implemented, could reduce or eliminate certain significant impacts of the Project. No feasible alternative brought to the attention of the lead agency (*i.e.*, the County) may be ignored or discarded without due consideration and analysis. With these legal requirements in mind, my clients would like DPLU to evaluate the following two alternatives, among others:

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- G76
1. **The "No Amendment/No Zone Change" Alternative.** Under this alternative, the project applicant would not request a General Plan amendment or zone change and instead would conform his project to the plan designation and zoning restrictions that currently govern the property. Such an alternative would still have to satisfy all applicable County ordinances and policies, including those which protect ridgelines, slopes, and other topographic and biological resources. This alternative would also have to meet any requirements imposed by the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers.
- G77
2. **The "Reduced Unit/No New Bridge" Alternative.** Under this alternative, the project applicant would reduce the number of residential units to a point where either (a) Cleveland Trail, *in its existing condition*, would serve adequately as a secondary/emergency access, or (b) no secondary/emergency access would be required. The purpose of such an alternative would be to eliminate the need for a new bridge over Buena Creek. As became clear during the recent Planning Commission hearing, the Project, as currently proposed, would require that the Cleveland Trail bridge over Buena Creek be widened, strengthened, and perhaps raised as well. The cost of this bridge work – in terms of money and impacts to the creek and riparian resources – is potentially huge.

Thank you for this opportunity to respond to the NOP. If you have any questions regarding this letter or its contents, please feel free to call me.

Sincerely,



David P Hubbard
of
Gatzke Dillon & Ballance LLP

DPH:rjf

cc: Lindsay Townley
Susan Arneson
Dave Root

G76. The County concurs that this is an appropriate alternative to evaluate in the EIR, and consistent with the comment, the EIR analyzes the No Project/Existing Zoning Alternative. Refer to Subchapter 4.3 of the EIR.

G77. The Project as proposed does not require the existing crossing of Buena Creek by Cleveland Trail to be altered for vehicular traffic. Therefore, no impacts to Buena Creek's riparian resources would result from that action and no additional alternative as requested in the comment is necessary. The only alternative not requiring secondary access is the No Project/No Development Alternative.